



803440



# THE TRIAL OF WILLIAM JOYCE





## THE OLD BAILEY TRIAL SERIES

General Editor: C. E. Bechhofer Roberts

1. HARRY DOBKIN
2. REGINALD SIDNEY BUCKFIELD
3. MRS. DUNCAN
4. JONES AND HULTEN
5. WILLIAM JOYCE

*Other volumes in preparation*





WILLIAM JOYCE

# THE TRIAL OF WILLIAM JOYCE

WITH SOME NOTES ON OTHER RECENT TRIALS  
FOR TREASON, ETC.

Edited, with a Foreword,

*by*

C. E. BECHHOFFER ROBERTS

*of Gray's Inn and the South-Eastern Circuit, Barrister-at-Law*



JARROLD'S *Publishers* (LONDON) *Limited*

*Founded in 1770*

47 Princes Gate, S.W.7

LONDON • NEW YORK • MELBOURNE • SYDNEY

1946

THIS BOOK IS PRODUCED IN  
COMPLETE CONFORMITY WITH THE  
AUTHORIZED ECONOMY STANDARDS

TO  
FRANK AND LUCY WHITWORTH

MADE AND PRINTED IN GREAT BRITAIN AT  
THE FLEET STREET PRESS  
EAST HARDING STREET, E.C.4

# CONTENTS

EDITOR'S FOREWORD .. .. .	<i>Page</i> 9
THE TRIAL OF WILLIAM JOYCE:	
<i>First Day—Monday, 17th September, 1945</i>	
Plea, and Opening Speech for the Prosecution .. .. .	29
Evidence for the Prosecution	
	<i>Page</i>
Gladys Winifred Isaac .. .. .	38
Harold Godwin .. .. .	41
Albert Hunt .. .. .	43
Alexander Adrian Lickorish .. .. .	48
Defence	
Mr. Slade's Submission to the Judge .. .. .	58
The Attorney-General's Reply .. .. .	64
Mr. Slade's Reply .. .. .	67
Mr. Justice Tucker's Ruling on the Submission .. .. .	67
Opening Speech for the Defence .. .. .	67
<i>Second Day—Tuesday, 18th September, 1945</i>	
Opening Speech for the Defence (continued) .. .. .	75
Evidence for the Defence	
	<i>Page</i>
Frank Holland .. .. .	81
Edwin Quentin Joyce .. .. .	85
John Woodmansey .. .. .	91
The Attorney-General's Submission to the Judge .. .. .	97
Mr. Slade's Reply .. .. .	111
<i>Third Day—Wednesday, 19th September, 1945</i>	
The Attorney-General's Application on counts 1 and 2 .. .. .	120
Mr. Slade's Reply (continued) .. .. .	121
The Attorney-General's Reply .. .. .	133
Mr. Justice Tucker's Ruling .. .. .	142
Closing Speech for the Defence .. .. .	142
Closing Speech for the Prosecution .. .. .	145
Summing-Up .. .. .	147
Verdict .. .. .	158
JUDGMENTS OF THE HOUSE OF LORDS .. .. .	159

# CONTENTS

OTHER RECENT TRIALS:	Page
(1) Jack Alcock.. .. .	172
(2) John Amery .. .. .	172
(3) Frank Axon .. .. .	180
(4) Norman Baillie-Stewart .. .. .	180
(5) Margaret Frances Bothamley .. .. .	181
(6) Elsa Gertrude Brietzmann .. .. .	181
(7) Thomas Haller Cooper .. .. .	182
(8) Ray Nicholas Courlander .. .. .	182
(9) Hugh Wilson Cowie .. .. .	183
(10) Frederick Arthur Croft .. .. .	183
(11) Patrick Joseph Dillion .. .. .	183
(12) Frances Dorothy Ecklersley and James Royston Clark ..	184
(13) Benson Railton Metcalf Freeman .. .. .	184
(14) Arthur Vincent Fryer .. .. .	184
(15) William Humphrey Griffiths .. .. .	185
(16) Gerald Percy Sandys Hewitt .. .. .	185
(17) Raymond Davis Hughes .. .. .	186
(18) Reginald Arthur Humphries .. .. .	186
(19) Dennis John Leister .. .. .	186
(20) John Lingshaw .. .. .	186
(21) Francis George McLardy .. .. .	187
(22) Edwin Martin, John Galaher and George Hale .. ..	187
(23) Alfred Vivian Minchin, Herbert George Rowlands, Ronald David Barker and Kenneth Edward Berry .. ..	188
(24) Walter Purdy .. .. .	188
(25) Theodore John William Schurch .. .. .	189
(26) Ronald Spillman .. .. .	189
(27) Henry Alfred Symonds .. .. .	190
(28) Pearl Joyce Vardon .. .. .	190
(29) John Eric Wilson .. .. .	190
(30) Dorothy Pamela O'Grady .. .. .	190
(31) George Johnson Armstrong .. .. .	191

# ILLUSTRATIONS

	<i>Page</i>
WILLIAM JOYCE .. .. .	Frontispiece
HITLER'S AWARD TO JOYCE .. .. .	48
JOYCE'S "WILHELM HANSEN" PASSPORT .. .. .	49
A "BRITISH FREE CORPS" PAMPHLET .. .. .	64
JOHN AMERY ARRESTED IN MILAN .. .. .	65
MR. JUSTICE TUCKER .. .. .	96
SIR HARTLEY SHAWCROSS .. .. .	96
MR. G. O. SLADE .. .. .	96
MR. DEREK CURTIS-BENNETT .. .. .	96
JOYCE'S ARRIVAL AT BRITISH SECOND ARMY HEADQUARTERS .. .. .	97
JOYCE'S PASSPORT APPLICATION, 1933 .. .. .	136-137





## FOREWORD

"PROPAGANDA" HAS BECOME one of the principal weapons of modern warfare; enormous importance is ascribed to it by both its producers and its recipients. It may be, however, that its importance has been considerably over-rated. For example, after the first World War (or, rather, that first portion of the German War which ended in 1918) the Germans complained that their defeat was largely due to the British leaflet propaganda which had insidiously sapped the morale of German civilians and recruits—a claim which gave boundless satisfaction to those responsible for issuing the leaflets. But, in point of fact, if I may speak as one who had some inside knowledge of the matter from the British end, this propaganda was somewhat ineffective until the closing months of the war: then and only then, with their military might breaking under an unbearable strain, did the Germans pay any real attention to it. So, too, it is hard to believe that the vast volume of Allied propaganda poured out from wireless transmitters between September, 1939, and D-day in June, 1944, had any but the slightest effect on German morale, civilian or military. Nor did the German wireless propaganda adversely affect the British war effort in those years. On the contrary, it provided a great deal of amusement for British listeners in the grim, blacked-out evenings: at its worst, it was unconscious humour of the highest quality, while at its best—and William Joyce, whose trial forms the main subject of this book, was undoubtedly the Germans' most outstanding broadcaster in English—it was entertaining but unimpressive.

We know, it is true, that things were different elsewhere. The broadcasts of Paul Ferdinand, *le traître de Stuttgart*, made a vast impression on French listeners in the first nine months of the war, up to the collapse of France; and no one who heard it will ever seek to deny the force of the German broadcast campaign to the Dutch and Belgian armies during the invasion of those countries in the spring of 1940, with its burden, "Lay down your arms; your struggle is hopeless!" The truth of the matter, it seems to me, is plain enough. "Propaganda" is effective only when addressed to a wavering or already demoralised audience: the vast majority of Britons, who even in 1940 did not know they were beaten, were then and thereafter wholly unaffected by it: Joyce's brilliance and all the painstaking efforts of his colleagues, German and British and American, in the Nazi service were wasted. But they were not overlooked: when the Germans cracked at last and the broadcasters began to fall into Allied hands, their listeners—almost subconsciously perhaps—realised what might have happened if the Battle of Britain had been lost; for once the propagandists were taken at their own valuation and bitter retribution was demanded by popular opinion and by the authorities.

I have said that Joyce was by far the best of the Nazi broadcasters in English. His voice and delivery were excellent; his matter was entertaining and often plausible and—in a service not remarkable for its intentional humour—his imitations of Mr. Churchill were masterly fooling. (How he achieved the nickname of "Lord Haw-Haw" I do not pretend to know, for there was nothing particularly dandified about his accent, though he was addicted to polysyllables. Possibly in the early days of his career on the German radio he was confused by British listeners with some other of his fellows, perhaps Baillie-Stewart, who also will be found later in these pages.) In the first year of the war one heard in every village a story, always unfounded, that in Joyce's latest broadcast he had mentioned some piece of local information—e.g., that the church clock had stopped at ten to eleven—which could only have reached him through the

ramifications of a "Fifth Column" communicating with him from England on concealed transmitters. But this typical suggestibility of people uncertain of themselves soon weakened and disappeared altogether after the summer of 1940, when Joyce became a source of popular delight equalled only by that veteran of English humour, Tommy Handley, who demonstrated once again that the British public—unlike the American—likes its jokes better, the more often they are repeated.<sup>1</sup> Innumerable music-hall and radio comedians brought down the house with a nasal cry of "Jairmany calling! Jairmany calling!" Joyce became symbolical of Nazi broadcasting in English.

His history was known to some extent, for many had met him as one of Sir Oswald Mosley's Fascist following before the war who had fought with words and blackjacks against the temperamentally similar Communists of the East End. In the course of one of these fights Joyce's right cheek was laid open by a razor or some other weapon. Then he had quarrelled with Mosley and taken a principal part in creating a National Socialist Party in London. His family background was said to be Irish, which seemed to explain many things.

The news of his arrest in Germany in May 1945 was a sensation even in the midst of all the sensations of those wonderful days. It appeared that two British officers gathering wood for a fire near the Danish frontier had been accosted by a man whose voice, when he addressed them in English, they instantly recognised as "Haw-Haw's": when challenged, he tried (so it was said) to fight his way clear and the officers brought him down with a bullet-wound in the thigh. "A pity they didn't aim a bit higher," was the general comment. We heard that he had recovered and was being brought to England for investigation and trial as a traitor; then at last, in June, he appeared at Bow Street for the preliminary hearings before a magistrate. Tenement-dwellers behind the court were able to give reporters and photographers facilities for observing him at exercise in the yard of the court: crowds waited, mostly in vain, for admission to the court. But what had been expected to be a comparatively simple occasion suddenly turned out to be just the opposite. It was whispered and then repeated, that he was not an Englishman at all; also that he had become a naturalised German. This last did not matter, because it is itself an act of high treason for a British subject to take the nationality of an enemy country in war-time. What did matter was that he claimed *never* to have been a British subject, but to be of United States birth and nationality. He was not even an Irish-American with a traditional grudge against the country of Cromwell and Mr. De Valera's other political opponents; on the contrary, his Irish connections were, if anything, with the "Black and Tans." But—and this seemed to be the only breach in his legal armour—he was in possession of a British passport (to which, as an American citizen, he was not entitled) when he went to Germany just before the outbreak of war. Did this fact make his subsequent behaviour treason?

It was a pretty legal problem, and no fewer than three Attorney-Generals had to consider it: first, Sir Donald Somervell of the Coalition Government, then Sir David Maxwell-Fyfe, of the Churchill "Caretaker" Government, and, finally, Sir Hartley Shawcross, whose appointment was part of the silver lining which mitigated the dawn of the Socialist Utopia after the General Election of July 1945. Rumour at the Bar declared that each of these Attorney-Generals had heard at first with incredulity the suggestion of the Department of the Director of Public Prosecutions that the improper possession by an alien of a British passport made him liable to prosecution for high treason in respect of acts committed abroad; that they had then studied the proposition with in-

<sup>1</sup>The more often, for instance, Mr. Handley's radio charwoman, Mrs. Mopp, cried, "Can I do yer now, sir?" the greater the delighted applause in the studio and a million homes. In modern England, it would seem, longevity is the soul of wit.

creasing interest, and that in the end professional repugnance had changed to enthusiasm.

Meanwhile the senior Metropolitan magistrate, Sir Bertrand Watson, granted Joyce legal aid, whereby he secured the services of a highly experienced solicitor, Mr. C. B. V. Head, of the firm of Ludlow & Co., which has its offices adjacent to Bow Street. On 25th June, Mr. L. A. Byrne, senior Treasury Counsel at the Old Bailey<sup>1</sup>, opened the case against Joyce at the magistrate's court with the assistance of Mr. H. A. K. Morgan<sup>2</sup> of the Director's department. He set out that the accused man held a British passport, issued in London, from 1933 to 1940 and that, when applying for its issue and subsequent renewals, he described himself as a British subject by birth, born at Galway in Ireland: *prima facie*, therefore, Joyce was a British subject. However, said Mr. Byrne, when Joyce was arrested in Germany, he announced that he was American-born, and a New York birth-certificate in his possession confirmed this. The evidence for the Prosecution was then taken down for use at the trial.

Mr. Head then raised the question whether there was any case for Joyce to answer, if indeed he were an American subject—or had been, prior to his German naturalisation. The only people, Mr. Head argued, who can commit treason are those who owe allegiance to the Crown, namely, (a) British subjects by birth; (b) the children of British subjects born abroad; (c) naturalised British subjects, and (d) aliens actually resident in the King's realm. And Joyce, said Mr. Head, was none of these; the Prosecution had neither proved, nor even attempted to prove, that his father was a British subject when Joyce was born in New York in 1906.

Replying briefly—for it was certain that the magistrate would not attempt to decide such an issue—Mr. Byrne pointed out that the prisoner had always described himself to the Passport Office as a British subject, and was indeed so described when he took out his German naturalisation papers; there was no evidence as yet that his father was ever a naturalised American citizen. All the proved evidence so far before the court showed Joyce to be a British subject. The magistrate then committed him to take his trial for high treason at the forthcoming sessions at the Old Bailey.

Mr. Head now briefed a strong team of counsel for the Defence. To lead it he chose Mr. G. O. Slade, K.C.,<sup>3</sup> who had sprung to the top of the tree during the past few years in the civil courts and, as well, in criminal cases which turned on complicated points of law, such as were provided by the innumerable and often contradictory administrative orders of the war departments. Then came Mr. Derek Curtis-Bennett, K.C.,<sup>4</sup> son of the famous Sir Henry Curtis-Bennett; like his father, he had spent his successful professional career almost exclusively in the criminal courts. He had become a "silk" in 1943, on the same day as Mr. Slade. And, as junior to them, Mr. James Burge,<sup>5</sup> another outstanding criminal advocate from Mr. Curtis-Bennett's chambers, was briefed. On the Prosecution side Mr. Byrne—who, incidentally, was made a Judge before the proceedings ended—was to be assisted by Mr. Gerald Howard,<sup>6</sup> and it was understood that they would be led at the Old Bailey by whichever Attorney-General should be in office after the forthcoming Election.

At the police-court, as indeed to the end of his long ordeal, Joyce showed

<sup>1</sup>See *The Trial of Harry Dobkin*, p. 13, footnote. Mr. Byrne was raised to the Bench later in the year.

<sup>2</sup>Called to the Bar (Middle Temple), 1912; senior legal assistant to the Department of the Director of Public Prosecutions.

<sup>3</sup>Called (Middle Temple), 1921; K.C., 1943; Chancellor of the diocese of Chelmsford; Recorder of Tenterden.

<sup>4</sup>Called (Middle Temple), 1926; K.C., 1943; Recorder of Guildford.

<sup>5</sup>Called (Inner Temple), 1932; counsel to the Post Office at the Central Criminal Court.

<sup>6</sup>See *The Trial of Harry Dobkin*, p. 13, footnote.

courage and composure. It should be remembered in his favour that he was not a man who had sold himself to Germany for gain or to escape the discomforts of a prison-camp, as had some if not all of the other individuals whose fate will be briefly chronicled in these pages. Joyce, there is no reason to doubt, was a genuine Fascist and considered that Britain would benefit by a totalitarian regime on Nazi lines, which would eradicate Capitalism, Communism, Semitism and all the other bugbears of his aggressive creed. When war seemed certain, he crossed to Germany to serve the cause in which he believed: it must have startled him when Hitler and Soviet Russia then entered in a pact of friendship, but at least he cannot have credited the Germans with sincerity. This difficulty, in any event, was solved for him when Hitler invaded Russia in 1941.

Joyce's sense of humour, always evident if not always agreeable to British listeners in his broadcasts, did not desert him even at the worst moments. It is said that on one occasion when his legal advisers visited him at the London jail where he was kept prior to the trial (and where incidentally four prisoners were punished for throwing patriotic insults and missiles at him from their cell-windows when he was at exercise), the question was discussed whether he should exercise his right to challenge any Jewish jurors who might be called to try him at the Old Bailey.

"How does one know them?" Joyce asked.

"Oh, when they take the oath they put on a hat or put their hand on their head," he was told.

"I see," said Joyce with a "dead-pan" face. "Well, if six of them do it, wouldn't it be a good idea if I took the oath the same way?"

An application was made by the Defence at the opening of the Old Bailey sessions in July for an adjournment, in order that certain important evidence might be brought from the United States. With the agreement of the Prosecution, the application was granted and the trial went over to the September sessions, when it began on Monday, the 17th September, 1945, before Mr. Justice Tucker,<sup>1</sup> one of the younger King's Bench Judges. By virtue of the Treason Act, 1945 (which received the Royal Assent on the 15th June, the day before Joyce was flown from Brussels to England) the procedure in trials for treason was assimilated to that in murder trials; three Judges were no longer required to sit, as had been the old practice. Joyce's trial was the first under the new Act. As was anticipated, Sir Hartley Shawcross, the new Attorney-General, appeared to lead Mr. Byrne and Mr. Gerald Howard for the Prosecution.

I ought to set out here the particulars of the indictment for high treason which the Clerk of the Court read to Joyce and the jury, because much of what follows will be more easily comprehended if the reader notes the vital difference in the dates between the first two counts on the one hand, and the third count on the other. Here they are:

"The particulars in the *first count* are that on the 18th September, 1939, and on other days between that day and the 29th May, 1945 [i.e. the day of Joyce's arrest] you, being a person owing allegiance to our lord the King, and while a war was being carried on by the German Realm against our King, did traitorously adhere to the King's enemies in parts beyond the seas—that is to say, in Germany—by broadcasting propaganda.

"In a *second count* of the same indictment it is charged that you, on the 26th September, 1940, being a person owing allegiance as in the other count, adhered to the King's enemies by purporting to become naturalised as a subject of Germany.

"And in a *third count* the particulars are the same as in the first count, that is to say, you are charged with broadcasting propaganda, but the dates are

<sup>1</sup>Sir Frederick Tucker; called (Inner Temple), 1914; K.C., 1933; Recorder of Southampton, 1936-7; raised to the Bench, 1937; Lord Justice of Appeal, 1945 (autumn).

different, and the dates in this case are the 18th September, 1939, and on days between that day and the 2nd July, 1940."

At risk of anticipating what will be more appositely set out hereafter, let me for a moment enlarge on the significance of the three counts. For convenience, I will start with the second. It charged Joyce with treason in that he became a naturalised German on the 26th September, 1940, and, as I have already pointed out, it is established law that for a British subject to naturalise himself in a foreign country at a time when it is at war with Britain constitutes treason. But, of course, it was now known that a basic question in this trial would be whether Joyce ever had been a British subject: if he had not, then—leaving aside all other questions about his allegiance—he clearly could not commit this particular offence. (Some people, by the way, learning that Joyce would argue that he was always an American citizen until he became a naturalised German, had suggested that a simple way out of all legal tangles over here would be to hand him over to the Americans to deal with for treason against the United States. But this would not have worked, because the United States did not come into the war until December, 1941: so that all Joyce's broadcasts against the Allies had been given either at a time when Germany was ostensibly at peace with America or after he had become—during that time of peace—a German subject.)

Now for the first and third counts. It will be seen that they are identical, except for the final date mentioned. The first count charged him with broadcasting for Germany between the 18th September, 1939, when (as was to be shown) he entered the Reich broadcasting service, and the 29th May, 1945, when he was arrested. But the third count referred only to a period between September, 1939, and the 2nd July, 1940, *when his British passport expired*. In other words, the first count assumed that he was and had always been a British subject—the German naturalisation, of course, being treated as a nullity—while the third count had been framed on the assumption that he was "a person owing allegiance to our lord the King" so long as—and *only* so long as—he held a British passport. Which last matter, as we shall see, was destined to become the pivot of the trial.

It appeared too that the Prosecution was prepared for other eventualities also, for, Joyce having pleaded Not Guilty to the whole of this indictment, the Clerk began to read a second indictment against him. The Judge stopped this, and people wondered what was being suppressed. The explanation, which the Judge gave the jury later on, was quite simple. The second indictment had been framed under the Treachery Act of 1940, a curiously named piece of legislation designed, *inter alia*, to punish "any person" (i.e., British or alien) who "with intent to help the enemy" does any act during war-time designed to assist the enemy within the United Kingdom. This Act had indeed been invoked on several occasions during the war against Germans who clandestinely entered England as spies; one must suppose that the Prosecution were bringing charges under it against Joyce as a precaution lest he escaped from the first indictment on the technical issue of his allegiance; and I assume—though I do not pretend to know—that the intention was to argue that, Joyce's broadcasts having been heard in Britain through the medium of wireless receiving-sets there, they thus became acts committed "in the United Kingdom." Whether the Prosecution could have succeeded in such a submission we cannot know, for in the event it was never argued and the second indictment shelved.

The Attorney-General then opened the case for the Prosecution. He began with the pious hope that the jury would not permit themselves to be prejudiced against Joyce because of what they knew or had heard about his antecedents, his attitude towards this country during the war, and his notorious broadcasts during the past six years. They were to "try this man according to the law,

without fear or favour, affection or ill-will, on the evidence; unprejudiced by any preconceived notions, coldly, dispassionately." It must seem rather a tall order to ask so much from any jury fresh from the ordeals of war; but in fact any twelve individuals—there are always twelve where a capital charge is concerned, even nowadays—set down in the strange and impressive atmosphere of the Old Bailey, with the Judge's majestic authority to guide them, may be trusted to fulfil their duty.

The Attorney set out the facts which the Prosecution would seek to prove. In so doing, he touched on the legal questions involved, which, by this time, every lawyer in court knew to be the crux of the trial. He told the jury what high treason meant—a simple enough matter where a prisoner of undisputed British nationality is concerned—and went on to extend his explanation to cover the case of Joyce, on whose behalf, as was well known, it was going to be argued that he was an alien, owing no allegiance to the Crown. "Protection draws allegiance," the Attorney quoted, "and allegiance draws protection": if a man claims the protection of the Crown, then he must be held to owe a corresponding duty of allegiance to it. Any question of law which might arise, Sir Hartley added, would be decided by the Judge, whose function it was to decide questions of law, just as the jury were there to decide questions of fact; but, in the submission of the Prosecution, if an alien obtained a British passport and went abroad with it, he "clothed himself with the status of a British subject" and "enveloped himself in the Union Jack"—in that he became entitled to the protection of the King's Consular and other representatives abroad or (in an enemy country) of the 'protecting power'—and, in consequence, he "was required to comport and demean himself as a loyal British subject."

Now, asked Sir Hartley, what was Joyce's nationality? In a statement which the prisoner made shortly after his arrest in Germany, he declared that he was born in America of an Irish father and an English mother, both of whom had been naturalised as American citizens before his birth; if this were so, the Attorney conceded, it would make Joyce an American citizen too. But in 1922, when he was sixteen years old, Joyce wrote a letter to the London University Officers' Training Corps in which he stated that he was born in America of British parents—with not a word about their naturalisation as Americans—and insisted that "I am in no way connected with the United States of America, against whom, as against all other nations, I am prepared to draw the sword in British interests." Eleven years later he formally applied to the Passport Office in London for a British passport, and in his application he described himself as "a British subject by birth, having been born at Rutledge Terrace, Galway, Ireland." He was issued with a passport, and, five years later again, in September 1938, applied for a year's renewal of it, once more describing himself as a "British subject by birth"; and he did precisely the same again in August 1939. Renewals of the passport were granted as a result of these applications, and it was with this passport that Joyce went abroad—presumably to Germany—just before the outbreak of hostilities.

"That, in the submission of the Prosecution, is a vital fact of this case," said the Attorney-General. "Whether the statement that he was born in Ireland was true or not, whether the statement that he was a British subject (whether by birth in Ireland, or by birth in America of British parents) was true or not, the submission of the Crown is that, so long as a passport continued to be valid, so long as it was held by him, it placed him . . . in exactly the same position under the protection of the British Crown as would be any other British subject." And, he repeated, "Protection draws allegiance." But what did Joyce do? Documents found in his possession showed that he entered the service of the German broadcasting authorities, in the English-speaking propaganda section, on the 18th September, 1939, a fortnight after the beginning of the war. Evidence would be called that he had been heard

broadcasting very shortly after that date, when he had assured listeners, quite falsely, that Dover and Folkestone had been destroyed by German bombing. Sir Hartley added that the jury would probably have little doubt "that it was because he was a British subject that he had his great value" to the Germans.

This last suggestion is rather hard to follow. Surely, one may think, Joyce's value to the enemy, apart from his undoubted skill and wit as a commentator, was his perfect command of English rather than his national status? It is quite true that, in the case of John Amery, who also broadcast for the Germans—and who was, technically, a very inferior performer—the chief asset was his family connection with a member of the British Government. But who in England cared a rap whether "Lord Haw-Haw" was a British subject or not, especially when for a long time his identity was not disclosed by the Germans? (The Attorney's suggestion must have shocked the war-time controllers of the British propaganda broadcasts to Germany, because they had apparently the cricket-pavilion idea that it was unsporting—or that the Germans would think it unsporting—if German nationals were used to broadcast to their own people. So throughout the war men of unimpeachable British nationality and with unmistakable British accents broadcast in German to the Germans, who may have regarded them with the same condescending derision as we did the numerous Germans who lectured us in Teutonic English over the air. Only towards the very end were a group of German refugees allowed to broadcast propaganda in their own language on a special wavelength; they, very naughtily—perhaps not being cricketers—seemed to be likely to get right under the Germans' hide with their German slang and German idioms and general understanding of the German mentality.<sup>1</sup> But it may well be that, as I said above, broadcast propaganda tends to be effective when those to whom it is directed are already half-beaten.)

Next the jury were told by the Attorney-General of Joyce's rise in the Reich broadcasting service, culminating with the award to him by Hitler in September 1944 of a Cross of War-Merit of the First Class! On the 29th May, 1945, he was arrested near Flensburg with various documents in his possession, including a German passport; and he made a long, signed statement to a British police officer, which the Attorney read out. It contained, for the first time, the suggestion that his parents were naturalised United States citizens at his birth, and went on to explain why he had gone to Germany in 1939. He had always been a right-wing Conservative in politics, said Joyce, and later had been attracted by Fascist ideals; in the 'thirties he felt that the British Government's policy was leading to economic ruin and the break-up of the Empire, whereas Hitler's programme in Germany was constructive. "One of my dominant beliefs," so ran a passage in the document, "was that a war between Britain and Germany would be a tragedy, the effects of which Britain and the British Empire would not survive, and I considered that a grossly disproportionate influence was exerted on British policy by the Jews, who had their reasons for hating National Socialist Germany." So, when Danzig flared up, "I decided to leave the country, since I did not wish to play the part of a conscientious objector and since I supposed that in Germany I should have the opportunity to express and propagate views the expression of which would be forbidden in Britain during the war."

One pauses to comment that the last sentence rings false, though all the rest—including that odd inferiority-complex attack on the Jews—seems genuine enough. It is noteworthy that, in a book published in Germany in 1940, *Dämmerung über England* ("Twilight over England"), Joyce wrote, "I came to

<sup>1</sup> They had a pleasing device of sending messages, ostensibly from bombed German towns, to named members of the German forces, and assuring them with every show of sympathy that, though their homes had been utterly destroyed in the latest British bombing raid, their families were comparatively unharmed—except for a few lost limbs, etc., etc.



Germany at the end of August, 1939, in order to help Germany to emerge victorious from the war." He can scarcely have been such a fool as to suppose that the Germans would permit him to preach Anglo-German reconciliation on the air, though it is not impossible that Hitler may at one time have contemplated permitting a Fascist or Nazi Britain to escape the worst fate which his extremists wished to mete out to the hated islanders.

As if, however, to rebut his own suggestion, Joyce continued his statement by saying that, realising that he had forfeited any moral right to return to England, he became naturalised in Germany with the intention of making it his permanent home. But, he insisted, he had still clung to the hope of Anglo-German understanding, though he realised after America and Russia entered the war that Germany would probably be beaten. He ended that he did not regard himself as a traitor or guilty of any "underhand or deceitful act against Britain": no final judgment should be passed on his actions "until it is seen whether Britain can win the peace." He added—and it is not to his discredit—that his wife, whatever she might say to the contrary, had accompanied him to Germany entirely under his influence.

After reading this statement, the Attorney-General briefly closed his speech. He told the jury that, if they decided that Joyce was a British subject throughout his career in Germany, they should convict him on the first two counts of the indictment. But if it transpired—and it was pretty obvious already that Sir Hartley knew that the facts would be against him on the question of Joyce's nationality—that the prisoner had never been a British subject, then the Prosecution invited the Judge to rule (as a matter of law) that the holding of a British passport up to July, 1940, entailed Joyce's allegiance to the King, and the jury to say (as a matter of fact) that Joyce's actions between September, 1939, and that date were in traitorous breach of his allegiance.

The first Prosecution witness was called for Mr. Byrne to examine in chief. She was a Miss Isaac from London University, and she produced from its archives the letter sent by Joyce to its O.T.C. in 1922. As we know, he wrote rather vaguely therein of his parentage, and professed his attachment to British interests as against all other nations. One passage in it must have shocked certain Southern Irishmen who, before the trial, had hinted at their intention of setting Joyce up as a martyr to Erin (and who, incidentally, had eagerly inquired whether any of his defending counsel were of Irish descent). Joyce said, "I have served with the irregular forces of the Crown in an Intelligence capacity against the Irish guerillas." As he was only sixteen at the time, it seems unlikely that he afforded much assistance to the "Black and Tans"; still, after this, one heard no more keening for him from Irish or Irish-American throats.

Cross-examining Miss Isaac, Mr. Slade obtained from her a copy of a letter sent to Michael Joyce, the prisoner's father, by the officer commanding the O.T.C., which asked whether the father had been naturalised in the United States; and the reply in which Michael Joyce avoided answering this question but stated that his son "was born in America. I was born in Ireland, his mother was born in England. We are all British and not American citizens." This last denial (which was soon to be proved untrue) did not, to be sure, help Mr. Slade's case, but he wanted the letter in court in order to compare the father's writing in it with that in other documents to be produced later.

Next came an official from the Passport Office in London, who produced Joyce's applications for a passport and its renewals in 1933, 1938 and 1939. On each document Joyce declared himself to be a "British subject by birth." Mr. Howard, who took this witness for the Prosecution, formally called on the Defence to produce Joyce's British passport; it was not forthcoming—presumably Joyce had destroyed it or handed it in to the Germans years before—so the witness was allowed to put in a specimen passport similar to that which had been issued to the prisoner.

The verbiage of its first page was read out, whereby Sir John Simon, the then Foreign Secretary, did "request and require in the Name of His Majesty all those whom it may concern to allow the bearer to pass freely without let or hindrance, and to afford him every assistance and protection of which he may stand in need." It is one of the ironies of this trial that, for most Englishmen, the obtaining of a passport has never been so much an aid to unrestricted travel in foreign countries—after all, one has usually to apply for special visas to enter them—as an indispensable preliminary to being allowed to leave the United Kingdom, and, even so, except in times of complete tranquillity, one may need also to secure an exit permit and a special endorsement permitting one to go to the desired destination. I well remember travelling round the world as a youth before the 1914 war without any sort of passport; I doubt if I was less well "enveloped in the Union Jack" for its absence. However, we live in a progressive civilisation and must learn to put up with it.

The first question which Mr. Slade asked this witness was very pertinent. "Am I right," he asked, "in saying that one year is the minimum period for which a passport can be renewed?"

The point of this was that, assuming Joyce only wanted the passport renewed in August 1939, in order to leave England and reach Germany, he would of necessity have to apply for a whole year's renewal.

The witness at first replied that a passport *could* be renewed for less than a year, but he eventually agreed that in practice a year was the minimum: and he admitted that the renewal-form bore the words, "Passports may be renewed for any consecutive period of one to five years." (Had the form been worded "Passports may be renewed for any consecutive period *up to* five years," it may be that Joyce would have asked for merely a week's or a fortnight's extension. In that case, count 3 would have had no force against him, because the passport would have lapsed before he entered the German broadcasting service on the 18th September. But, unfortunately for him, this was not the case).

Mr. Byrne then called a Detective Inspector from the Special Branch at Scotland Yard who had heard Joyce speak for the British Fascists before the war and who, being at Folkestone in the winter of 1939, recognised Joyce's voice coming over the wireless from Germany and announcing that Dover and Folkestone had been bombed to destruction. He added that he had also heard Joyce on the air frequently after that time. The officer put in his verbatim transcript of some of Joyce's later broadcasts up to 1943. Readers will now appreciate that the 1939 Dover-Folkestone broadcast was vital, because it fell within the time-limit of count 3 of the indictment; whereas the later broadcasts were relevant only to counts 1 and 2, the importance of which was rapidly receding. So Mr. Slade did not bother to cross-examine about these; he confined himself to challenging the accuracy of the Inspector's notes about the Dover-Folkestone broadcast, and it seemed from his questions that Joyce denied having made it. For one thing, Mr. Slade suggested, its contents were absurd; no bombs had fallen in England at all up to that time, and Dover and Folkestone were unscathed. However, the witness stuck to his guns and the Attorney-General, re-examining him, made him agree that English-speaking listeners outside the Dover-Folkestone area might well have believed the false news and been perturbed by it.

Captain Lickorish, one of the Army officers who arrested Joyce, told how he and a friend had come upon him in a wood near Flensburg on the 28th May, 1945. They had instantly recognised the voice and the other officer asked, "You wouldn't be William Joyce, would you?"

Joyce had then reached towards his pocket, whereupon the other officer shot him in the leg. Presumably Joyce was reaching not for a weapon—for he was unarmed—but for a false German passport he carried, for, as he fell, he said (according to this witness), "My name is Fritz Hansen."

True, the passport was in the name of "Wilhelm Hansen"—either Joyce forgot this, or the witness's hearing was at fault—but, as Joyce was also carrying a German travel permit made out in his true name, he was promptly identified and handed into military custody.

There followed an officer from the Intelligence Corps, who had found a German Broadcasting Company's receipt, signed by Joyce, at the radio station in Luxembourg a fortnight before the arrest. This witness also had taken the long signed statement from Joyce to which I have already referred, and it was now read to the court. He went on to produce a copy of an American birth-certificate which stated that a William Joyce—"Sex: Male. Colour: White"—was born in the city of New York on the 24th April, 1906; as well as various German official documents, signed by Joyce and relating to his employment and status in Germany during the war.

After the luncheon adjournment, Mr. Samuel Salzedo was called into the witness-box. Mr. Salzedo, with his angular features and mop of white hair is a familiar figure in English courts, civil and criminal alike, for he happens to be an interpreter and translator of quite exceptional ability. English, French, German, Russian, Polish, Spanish, Italian, Dutch, Portuguese and I know not how many other languages pour from his lips correctly and without hesitation: I have known no linguist to compare with him, with the possible exception of the late Harold Williams, once Foreign Editor of *The Times*. (Outside the courts Mr. Salzedo adds to his picturesqueness by wearing a romantic cape and, sometimes, carrying a violin or two. He has also written a primer on astronomy in Basic English.) On the present occasion he produced translations he had made of the German documents already mentioned and, with scarcely a shudder at the brutal Englishing of German words and names by counsel, explained certain matters in them.

First of all the "Hansen" passport was put in, issued at Hamburg in November, 1944, when Joyce presumably decided that events on the various war-fronts made it advisable for him to efface himself under a new name. Even so, the German authorities seem characteristically to have insisted on some degree of accuracy, for "Wilhelm Hansen" was stated to have been born in Galway in 1906 (though on the 11th March, not the 24th April, which was Joyce's real birthday); one would have thought that they might have allowed him to sink his old identity completely.

Next came his *Wehrpass*—his military passport—which gave correctly his name, birthplace (New York), parentage and occupation: significantly enough, it described him as "German, formerly English."

Then Mr. Salzedo passed on to the Luxembourg receipt and to another document, dated the 26th June, 1942, appointing Joyce chief commentator on the German radio for "the group of countries, 'England.'" In this, by the way, another pseudonym appeared, "Wilhelm Frohlich"; this, in English, would be "William Joyous" and may therefore be regarded as a piece of German humour. Next came a paper, signed by Hitler, which announced the award of a Cross of War-Merit of the First Class to "Chief Commentator William Joyce" on the 1st September, 1944. His *Volkssturm* (Home Guard) card was then produced and, later, his Work Book, which contained the damning entry that he had entered the German broadcasting service in September, 1939. (This was highly important in regard to count 3 of the indictment.) Mr. Slade had no questions to put to Mr. Salzedo in cross-examination; nobody can ever doubt the latter's competence as a translator, and the documents spoke for themselves.

Chief Inspector Bridges gave formal evidence of charging the prisoner with high treason on his arrival in England, and of Joyce's reply, "Yes, thank you." (Presumably the Chief Inspector had, as usual, asked Joyce if he understood the charge.) And so the case for the Prosecution was closed.

Then Mr. Slade went into action. He led off by submitting to the Judge

that there was no case at all to go to the jury. Before any offence of treason, he argued, could be imputed to Joyce—and certainly so far as counts 1 and 2 were concerned—the Prosecution must prove that he was or had been a British subject: only in that event could he be said to have broken his allegiance to the Crown by acts committed abroad, in Germany. The Prosecution, Mr. Slade said, had failed to prove Joyce a British subject: could they not easily have produced his birth-certificate if he had really been born in Galway? The fact that he had sometimes claimed to have been born in Galway was immaterial: first, such a claim could only be based on hearsay, and, secondly, even if it were a deliberate lie made in order to obtain a passport, it still did not affect Joyce's true position—for "*nationality is a matter of status; it is not a question of contract.*" In other words, Mr. Slade went on, a Chinaman cannot make himself a British subject by screaming from the housetops that he is one, nor does he become a British subject by improperly obtaining a British passport. A man either *is* or *is not* a British subject; and the Prosecution had signally failed to prove that Joyce was one.

Mr. Slade declared that, until the Attorney-General opened the case, the Defence had not appreciated that the Prosecution sought to draw a distinction between count 3 and the other two counts of the indictment. Anyhow, he said, the distinction led nowhere, because all legal authority (except for one solitary passage in an old book) insisted that an alien who was outside the King's dominions owed no sort of allegiance to the Crown.

The Judge commented on this that, whatever might eventually prove to be Joyce's nationality at the material times, there was some evidence at the moment before the court—in the written applications to the Passport Office and in some of the German documents—that he was a British subject. There was as yet no evidence to the contrary: true, a New York birth-certificate had been produced, but nobody had yet proved that it referred to the prisoner.

In his turn the Attorney-General, replying to Mr. Slade's submission, pointed out that, even if the birth-certificate did turn out to be the prisoner's, it did not necessarily show him to be an American citizen; if his father were a British subject when Joyce was born, then Joyce too would be one. The Attorney denied that the onus here was on the Prosecution to prove the prisoner's British nationality; *prima facie* evidence had been called to show that he was British, and it was for the Defence to shake this, if they could.

Both counsel quoted authorities to support their contentions—it was rather like a preliminary canter before the real struggle—but the Judge cut them short by ruling that "At the present stage there is *some* evidence which, if uncontradicted, would entitle the jury to come to the conclusion that this man was a British subject." Which meant that the Defence must call rebutting evidence.

Mr. Slade, therefore, opened his case. He told the court that he was going to produce witnesses who would prove conclusively that Joyce was born in New York of parents who were already naturalised Americans: indeed, when they came to England during the last war, they were listed by the British police as aliens. Unfortunately, both parents had now died—the father in 1941, and the mother in 1944—and, though an uncle was alive in America, it would be undesirable to ask to adjourn the trial again for his attendance: still, even without the uncle, Mr. Slade said, he was confident that he could prove the parents' United States naturalisation. He added (doubtless to the disappointment of the jury and of newspaper-readers all over the world) that he did not propose to call his client to give evidence, because Joyce "could not possibly give you any evidence of when or where he was born"—his knowledge of that remote event must of necessity be the merest hearsay—and "still less can he give you any evidence of when his father was naturalised," which was some years before Joyce was born. Finally, with regard to count 3, Mr. Slade insisted that the question whether the renewal of his British passport for a year

from August 1939 to July 1940 carried with it a duty of allegiance towards the Crown "is, as I understand it, a pure question of law," which was for the Judge to decide and on which he would be addressed in due course.

The court had adjourned half-way through this speech and, when Mr. Slade ended it next morning, the Defence called their first witness. He was a deaf old gentleman named Holland, who had known the Joyce family in New York in the early years of this century. He said that Michael Joyce, the father, always claimed to be a naturalised American citizen. (The Attorney formally objected that this evidence was inadmissible as being hearsay—which, strictly speaking, it was—but the Judge admitted it. In murder or treason trials all reasonable latitude is always accorded to the Defence; besides, in this instance, the Judge probably felt that the sooner the matter was cleared up, the better.) Mr. Holland identified the prisoner as Michael Joyce's eldest son, whom he had known all his life. Incidentally, the witness had himself become naturalised in the United States and was eager to tell the court how distressfully such "aliens" are treated by the British police in war-time: he was headed off this irrelevancy.

It was significant that the Attorney-General did not cross-examine him. This meant that the Prosecution could not dispute the truth of his statements.

Then a Mr. Quentin Joyce, a younger brother of the prisoner, entered the box. He was asked by Mr. Slade what his father said about his nationality. Again the Attorney-General objected, and after a short legal squabble the Defence shelved this matter temporarily. The witness then declared that he had seen his father burn an American passport a few years ago, and he identified his father's signature and handwriting on various documents. Mr. Slade returned to the first point: he submitted to the Judge that the father's statements about his nationality might be put in evidence, because it is a rule of law that dead men's statements "against interest" may be admitted. It was certainly against the father's interest, Mr. Slade said, to declare himself an American citizen in England, because, among other things, he would as an alien be disqualified from voting in an election, and so on. The Attorney-General commented shrewdly that it came strangely from the Defence in this trial to say that "a declaration of a man that he is not of British nationality is a declaration against his interest" (it being, after all, Joyce's main hope of escaping conviction), but he did not press his point and the Judge allowed the evidence to be given. The witness formally stated that his father had frequently declared himself to be a naturalised American.

This witness too was not cross-examined by the Prosecution, but Mr. Slade was taking no chances. He called two police officers, one from Lancashire, the other from Ireland, who had chived the Joyces as aliens during the first war. Again the Prosecution did not cross-examine. A handwriting expert declared that the signatures of Joyce's father on various documents which had been put in were all written by the same man. Mr. Slade had cunningly asked one of the Prosecution witnesses if he really professed to be able to identify a man's signatures when there was an interval of many years between documents on which they appeared; the witness having declared that there was no difficulty at all, Mr. Slade was now able to use that statement to confirm his own witnesses' claims. The last witness for the Defence was the First Secretary of the United States Embassy in London, who deposed that, if Joyce's parents were naturalised Americans at his birth, he was *ipso facto* an American citizen.

The Judge now asked the Attorney-General if, having heard the Defence witnesses, the Prosecution any longer sought to suggest that Joyce was a British subject. The Attorney said they did not, and the Judge remarked, "I think everybody must agree that the evidence which has been tendered is really overwhelming."

And so counts 1 and 2—which, be it remembered, charged Joyce with broadcasting for the Germans from 1939 till his arrest, and with purporting

to become a naturalised German subject in September 1940—virtually vanished from the case. It was now clear that he was not guilty on either count, because he was not a British subject at the material times, or indeed at any time. (Next morning, by the way, the Attorney made the position doubly clear by asking that the wording of those two counts be amended by substituting "being a British subject" for the vaguer phrase, "being a person owing allegiance to the Crown." No more, then, was heard of counts 1 and 2 except when the Judge in his summing-up formally directed the jury to acquit Joyce on them.)

Then the Judge invited the Attorney-General to submit his case with regard to count 3, in order that Mr. Slade might know what arguments he had to meet. And the real struggle began.

The Prosecution, as I have said, were setting up a proposition which had never before been established in an English (or, so far as I know, any other) court of law, namely, that an alien who obtains a British passport, however improperly, and goes abroad with it remains, so long as it remains valid, in such a relationship of allegiance to the Crown that, if he assists the King's enemies, he is committing high treason. If the Attorney-General could now show that this proposition was in line with the English Common Law (that is to say, was covered by legal authority throughout the centuries) even though it had never before been laid down in terms, then the Judge could hold that it was sound. Whereas the Defence, of course, relied on the narrower proposition, for which there was certainly much authority, that an alien's allegiance to the Crown persists so long, and so long only, as he remains actually resident in the King's dominions. If the Defence proposition was correct, then Joyce would be acquitted; if, on the other hand, the Prosecution could establish that he owed allegiance to the King until his passport expired in July, 1940, then the jury would be asked to decide upon his guilt.

Both sides were armed with reports of cases going back three hundred years and, as well, with legal textbooks—Coke, Blackstone and so on—of acknowledged authority. The Attorney and Mr. Slade between them covered the whole field, quoting not only from the cases and books which were in their favour but from those which seemed to be against them, seeking, of course, in the latter case to show that the decisions and dicta did not really settle the point at issue. I do not propose here to do more than very briefly summarise their main arguments. The reader will find the full text of their speeches on later pages and, while I do not pretend that it is all light reading, there is really nothing in it which cannot be followed and understood by anybody. The ten men and two women in the jury-box certainly found the contest of enthralling interest, knowing too as they did that a man's life might depend on its outcome. Fortunately both advocates are masters of clarity and conciseness: more ponderous or less skilful members of the Bar—especially in the last century—might have made the trial a nightmare of prolixity.

Here, then, is a short and necessarily inadequate summary of the Attorney-General's main arguments, which he now submitted to the Judge:—

1. Protection and allegiance are reciprocal. "Protection draws allegiance, and allegiance draws protection."

2. An alien who is resident in England admittedly owes allegiance to the Crown, since he lives here under its protection. It is also established law that, if such an alien goes abroad temporarily but leaves his family and effects here in the protection of the Crown, his allegiance continues during his temporary absence.

(When the Attorney remarked that Joyce had applied for his passport as being for "holiday touring," which suggested that he meant to return to England—and would, indeed, be entitled to return—the Judge suggested that Joyce's intentions would be a matter for the jury to decide. The Attorney agreed.)

3. An alien travelling abroad with a British passport is as much under the

protection of the Crown as if he were a British subject. "Both have the same passport and both enjoy the same right to protection."

4. British passports can be, and are, issued to aliens. Even if the passport was obtained by mistake or (as in Joyce's case) by fraud, the Crown's duty to protect the holder remained, wherever he might be. In an enemy country, he would be entitled to the protection of the "protecting power." (This was Sweden, so far as the holders of British passports in wartime Germany were concerned.)

Now came Mr. Slade, whose submission too I summarise, under, so far as possible, the same paragraph-numbers as I have used in epitomising Sir Hartley's arguments.

1. An alien owes allegiance to the Crown only so long as he is actually resident in the King's dominions. This has been laid down many times.

2. It was absurd to suggest that Joyce had left his family and effects in England, just because his parents and grown-up brothers and sisters remained here. He had no sort of control over them. So far as was known, his wife went to Germany with him. Further, Joyce had said in his statement that he had no intention of ever returning to England; indeed, to do so would be to put his head into the lion's mouth.

3. The issue of a British passport to an alien does not of itself "clothe him with the status of a British subject." In 1940 a Turkish holder of a British passport issued to him in Palestine was recommended by a London magistrate for deportation as an alien, and the recommendation was upheld by the Court of Criminal Appeal.

4. The discovery that a man had wrongly obtained a British passport would disqualify him from protection by the King's representatives in a foreign country if he got into trouble. His passport would then be withdrawn, and protection refused; therefore he would owe no allegiance to the King.

Suppose, Mr. Slade added, that Joyce had gone to the United States in 1939 instead of Germany, and suppose the United States had come into the war against Britain. As an American citizen he would have had to fight against Britain: would anybody have suggested that, because he happened to have obtained a British passport, he became a traitor to the King?

And, finally, Mr. Slade put up a fresh point.

5. No English court has jurisdiction to try foreigners for crimes committed by them abroad, except in the case of piracy. Joyce was not charged with being a pirate!

When Mr. Slade sat down, early in the third day of the trial, the Attorney-General answered him. Again I adopt the same order and numbers, though, of course, neither advocate actually used the same sequence as his opponent. Here, then, very briefly, is what the Attorney said:—

1. In old days the legal conception of "residence" might well be confined to actual presence inside the Realm; but to-day, with increased travel facilities, it must be widened to wherever the King's protection extends to cover a passport-holder. (Mr. Justice Tucker pointed out that Joyce's passport was issued for use not only in Germany, but also in other countries which had been neutral.) There was admittedly no precedent to the present case, but it is characteristic of the Common Law of England that it broadens down from precedent to precedent.

2. Joyce had applied for his passport for "holiday touring" only. The presumption, therefore, was that he intended, when he left England in 1939, to do what he had always done before, namely, to return after a short absence.

(When, this time, Sir Hartley remarked that Joyce's intention might be for the jury to decide, the Judge, who seemed to have revised his previous view, remarked that "I doubt whether it *is* an element for their consideration, having regard to the way in which you put the case.")

3. The Turco-Palestinian gentleman's case merely showed that the holder of a Palestinian-British passport may still be regarded as an alien in England.

4. Nobody can put an end to the validity of a passport except the Power that issues it. Nobody had withdrawn Joyce's passport from him.

5. The Defence point about jurisdiction begged the whole question at issue. If Joyce (alien though he was) owed allegiance to the Crown while travelling abroad with his British passport, then he could certainly be tried by an English court for treason, just like any British-born traitor. If allegiance exists, then jurisdiction exists for an English court to try breaches of it, wherever committed.

After the luncheon adjournment, Mr. Justice Tucker gave his ruling. It was against the Defence. He said that he would direct the jury as a matter of law that on the 24th August, 1939, when the passport was renewed for the second time, "the prisoner undoubtedly owed allegiance to the Crown of this country and on the evidence given, if [the jury] accept it, *nothing happened at the material time thereafter*"—that is, up to July, 1940, when the passport expired—"to put an end to the allegiance that he then owed." What therefore remained for the jury to decide, the Judge added, was whether, as a question of fact, Joyce had intentionally adhered to the King's enemies during that period.

After this disaster, Mr. Slade now addressed the jury in what he must have realised was a hopeless endeavour. He argued—and, remember, he was now concerned only with the facts of the case, and no longer with its legal aspects—that the only evidence before the court that Joyce had in fact assisted the Germans between August, 1939, and the expiration of his passport in July, 1940, was that of the police officer who purported to recognise the prisoner's voice in the broadcast about the destruction of Dover and Folkestone. Could anyone believe that a man of Joyce's intelligence would have broadcast anything so ridiculous? It might be asked, Mr. Slade went on, why he had not put Joyce into the witness-box to deny making that broadcast: the answer was that it was the Prosecution's duty—not the Defence's—to prove their case. (One may comment on this that, had Joyce given evidence and denied this particular broadcast, he would have been asked in cross-examination if he had not made other broadcasts for the Germans in the vital period; if he denied this—and he might not have done—he would have been faced with the damning entry in his German Work Book that he had been employed in the German broadcasting service from the 18th September, 1939. He simply could not afford to go into the witness-box.) So Mr. Slade asked the jury to say that they were not entirely satisfied that Joyce had made that broadcast; but, even if they thought he had, were they nevertheless satisfied that he intended to help the Germans by it? "Every time you tell a lie to British subjects, you don't adhere to the enemies of His Majesty the King," Mr. Slade suggested. As for the entry in the Work Book, this might only mean that Joyce, when he entered the Germans' employment, intended at some future date to help them: but mere intent without overt acts was not treason. The argument was ingenious but not very convincing.

The Attorney-General, closing for the Prosecution, spoke as shortly as his opponent. He quoted from Joyce's signed statement to show that he admittedly went to Germany to propagate his views, while the Work Book showed that he entered the enemy's broadcasting service only a fortnight after the war started. Further, Sir Hartley said, there was no reason why the jury should reject Inspector Hunt's evidence about the Dover-Folkestone broadcast, nor was that broadcast so senseless as the Defence wished to suggest: listeners all over the world might well have believed it to be true, and such an impression was well calculated to assist the Germans' war of nerves against us.

The Judge then summed up. He began by explaining to the jury what the first two counts in the indictment had meant and why they had now been



abandoned by the Prosecution: he directed the jury to return a verdict of Not Guilty on them. As for the third count, which now alone remained, he had been solely responsible for ruling on the question of law involved in it; nevertheless, he thought a brief explanation why he had upheld the Prosecution's submission might be convenient, "partly for your assistance and perhaps for consideration hereafter"—"hereafter" meaning, of course, in the event of an appeal. I need not set out what the Judge said, because in substance he accepted the Attorney-General's submission, namely, that up to the time when the passport expired, Joyce was entitled to the protection of the Crown and owed it corresponding allegiance.

Turning to the facts on which the jury had now to give their verdict, Mr. Justice Tucker reminded them of the evidence about the Dover-Folkestone broadcast and the various documents that placed the prisoner in the German service from September 1939. If the jury accepted that evidence, the Judge said, and decided that Joyce had assisted the Germans at the material time (and had intended so to do), then they might convict him; but if they had any reasonable doubt in the matter, they must acquit.

The jury retired for twenty-three minutes and returned with a formal verdict of Not Guilty on the first two counts and Guilty on count 3. Sentence of death was then passed. It is the only sentence which can be passed on a prisoner found guilty of high treason.

Convictions involving the death penalty always go to appeal, except in the exceedingly rare instances where the prisoner has pleaded Guilty, as John Amery did in a case to be mentioned later in this book. And at Joyce's trial, of course, legal points had been raised of quite unusual difficulty and doubt. His appeal was duly heard at the end of October 1945, by a Court of Criminal Appeal consisting of the Lord Chief Justice (Lord Caldecote), Mr. Justice Humphreys (the most experienced Judge in criminal cases on the Bench) and Mr. Justice Lynskey, a comparatively new appointment. Mr. Slade and Sir Hartley Shawcross repeated their arguments over a period of three days, but the Court—in a judgment delivered by the Lord Chief Justice—unanimously approved Mr. Justice Tucker's ruling on count 3 in the lower court and dismissed the appeal.

There arose now the question whether appeal could be made to the House of Lords, the highest legal tribunal in the country. The Attorney-General's certificate has to be obtained that "the decision of the Court of Criminal Appeal involves a point of law of exceptional public importance and that it is desirable in the public interest that a further appeal should be brought";<sup>1</sup> as to which in this instance there could be no doubt at all. So the certificate was issued.

Meanwhile, it would be idle to say that lawyers were agreed on the main issue in the case. The Prosecution's contentions carried the law of treason farther than it had ever been stretched before: they might be right or they might be wrong, but the Bar certainly wished to know what the Lords had to say about them. To many it seemed that the Prosecution were right, both in law and in common-sense, in arguing that a man who obtains a British passport, however fraudulently, acquires by its possession a right to the protection of the Crown and owes it corresponding allegiance. If, for instance, the Germans had accused Joyce in the early part of 1940 of some offence and interned him, he would have been entitled to whatever assistance the protecting power, Sweden, extended to British subjects in that situation.

But others borrowed a striking phrase from Mr. Justice Tucker's summing-up, where he said that "There is no such thing known to our law as 'crime by estoppel'; you cannot become a traitor by estoppel." Now, "estoppel" means that "a man shall not be allowed to blow hot and cold—to affirm at one time

<sup>1</sup>Criminal Appeal Act, 1907, 1 (6).

and deny at another—making a claim on those he has deluded to their disadvantage, and founding that claim on the very matters of the delusion.”<sup>1</sup> Applying these words to Joyce, it means that he, by describing himself as a British-born subject when applying for his passport and its renewals—or, to take the matter a stage further, by fraudulently obtaining a British passport, no matter how—would be disentitled (“estopped”) from founding his defence on the fact that he had deceived the passport officials. Was not this, asked some sceptics, really what had happened? The answer, it seems to me, is that the Prosecution put the matter quite differently. For all they cared, Joyce might blow as hot and cold as he wished; they declared *affirmatively* that Joyce owed allegiance because he had in fact secured protection, whether he was a British subject or not, and no matter how he obtained his passport. And the Judge had agreed with the Prosecution; so had the Court of Criminal Appeal.

The House of Lords sat at last on the 10th December, 1945, to hear the arguments, now familiar enough to my readers, of Mr. Slade and the Attorney-General, both of them, and Mr. Curtis-Bennett too, suffering from the unpleasant disability of having to wear their heavy full-bottomed wigs (such is the penalty of being King’s Counsel) while the five members of the Court—the Lord Chancellor (Lord Jowitt), and Lords Macmillan, Wright, Porter and Simonds—somewhat incongruously wore no wigs or robes at all. When the speeches, which, as is customary in appeals, were interspersed with questions and observations by the Judges, ended on the fourth day, the Lords adjourned for a while to consider their decision. A majority verdict would suffice, but it was, I gather, by no means clear to the counsel concerned which way they were likely to find; it was certain that there was some measure of disagreement among them. Indeed, when they did return, it was to announce that they would not give their decision that day at all, but would announce it at a special sitting four days later, on the following Tuesday.

When that day came, four out of the five Lords of Appeal held that the appeal must be dismissed; they would deliver their reasons at a still later date. Lord Porter, however, disagreed with his colleagues. He said this:—

“In agreement with all your Lordships, I think that the renewal of his passport, which Joyce obtained on the 24th August, 1939, was evidence from which the jury might have inferred that he retained that document for use up to 18th September of that year, when he was proved to have first adhered to the King’s enemies, and might therefore have inferred that he continued to owe allegiance to the Crown up to that date. As, however, in my view, the question whether he did so retain it was never left to the jury, but they were directed as a matter of law that his duty of allegiance was extended to the later date, and as your Lordships cannot send the case back for retrial, I would myself allow the appeal on that ground.”

Readers will note what this dissentient judgment says, and what it does not say. Lord Porter agrees that there *was* evidence from which the jury might have inferred that Joyce retained the passport up to the time he entered the Germans’ service and intended to use it: this question, in Lord Porter’s view, should have been left to the jury to decide. (What the jury would have decided one cannot say with complete assurance: but I find it hard to suppose that they or any other jury would have answered the question in Joyce’s favour.) But Lord Porter did not say that the question whether Joyce’s retention of the passport carried with it a duty of allegiance to the Crown was a matter for the jury; for this was a question of law. His full judgment, given afterwards, makes this clear.

Suppose, indeed, that Joyce, having merely used the passport as a means

<sup>1</sup>Baron Parke in *Cave v. Mills* (1862), reported in *Hurlstone & Walmsley’s Reports*, vol. 7, p. 927.

of leaving England, had destroyed it the moment he reached Germany or, better still, had torn it up and sent the pieces back to England, disclaiming any further interest in it? What then? Would the Prosecution have succeeded in their contention that, despite his repudiation of it, the passport still remained effective until it expired or the Crown agreed to cancel it? Very likely not, but, since no evidence was available to suggest that anything of the kind ever happened, these are only idle speculations.

Joyce was hanged at Wandsworth Jail on the morning of the 3rd January, 1946, four weeks before the Lords delivered their judgments on his appeal, which will be found at the appropriate page in this volume.

It would be idle to pretend that lawyers as a body were, or are to-day, altogether satisfied with the outcome of the affair. New law had been made, or, rather, the existing law had been stretched almost to breaking-point—and a man had died for it. The general public, on the other hand, had no doubts in the matter: and for once they may have been right and the doubting lawyers wrong. The legal mind tends on occasion to be over-subtle.

And now I invite my readers to take their places in the jury-box at the Old Bailey on Monday morning, the 17th September, 1945. Never mind the long queues stretching down the street: you shall go straight in, but very few of them will be admitted. On your left as you take your seats, is the witness-box, the Bench and the little box in which the official shorthand-writer sits. Immediately before you is, first of all, a row of seats reserved for the Press—but so many Pressmen from all over the world wish to be present at this trial that some of the public benches have also been reserved for them—then the solicitors' table at which are seated the police officers in the case, members of M.I.5 of the War Office in uniform, representatives of the department of the Director of Public Prosecutions, and the defendant's solicitor; and beyond them, counsel's benches, with the Attorney-General and Mr. Byrne at one end of the front row, and Mr. Slade and Mr. Curtis-Bennett at the other. Mr. Howard and Mr. Burge sit in the second row, behind their respective leaders, and, behind them again, are numbers of barristers in wig and gown and, still farther back, privileged members of the public on the benches retained by the Common Council of the City of London. Before the front row of counsel you will note that a special shelf has been fitted to hold some of the books to which they will be referring in the course of the trial; other volumes overflow on to their desks. Between the solicitors' table and the Judge's platform is a raised desk at which the Clerk of the Court and his assistant are sitting and, beside them, the Director of Public Prosecutions, Mr. Theobald Mathew (the son of the late Charles Mathew, K.C., of the Chancery Bar, and nephew of that great legal wit, the late Theo Mathew), newly appointed to this post on the resignation of Sir Edward Tindal Atkinson. On your right is the raised dock.

You hear three taps on the door behind the platform, like the signal in a French theatre for the raising of the curtain. Everybody rises and faces the Bench. The door opens, and a small group of aldermen and sheriffs in their robes pass through, standing aside then to bow to the Judge, who enters in his red robe, carrying in his hand a pair of white gloves and that strip of black cloth which is called the black cap. He reaches his desk in the centre, while an usher intones an ancient proclamation.

When he finishes, the Judge turns and bows to the aldermen, then to the Clerk and to counsel, and to yourselves in the jury-box. He sits down, placing the black cloth unobtrusively behind a row of books where the prisoner will not see it—until, maybe, the end of the trial.

"Put up William Joyce," the Clerk calls.

You hear footsteps on the stairs at the back of the dock. A short man with a scarred cheek and cropped hair—Joyce has been suffering from some affection

of the scalp and is still being treated for it—comes up, walks stiffly to the front of the dock, casts a quick, expressionless glance round the court and bows to the Judge.

The Clerk picks up a sheaf of large typewritten pages, bound with green ribbon, and, addressing the prisoner, says—what you will find in the pages which now follow.

I have changed and omitted nothing from the proceedings at the trial which you would have heard, except that on one or two pages I have altered a few references to "Exhibit Number This" and "Exhibit Number That" to a description of the document produced. And at the end of the book, after the House of Lords judgments in the now leading case of *The King v. Joyce*, you will find brief accounts of some other recent trials of men and women who were false to their allegiance during the war.

My thanks are due to Mr. A. J. F. Wrottesley, of the Inner Temple, who has kindly assisted me by correcting and checking the proofs of the proceedings at the trial and of the House of Lords judgments.



CENTRAL CRIMINAL COURT.

OLD BAILEY, E.C.4.

Before:  
MR. JUSTICE TUCKER.

REX  
v.  
WILLIAM JOYCE

THE ATTORNEY-GENERAL (SIR HARTLEY SHAWCROSS, K.C., M.P.),  
MR. L. A. BYRNE, and MR. GERALD HOWARD appeared on  
behalf of the Prosecution.

MR. G. O. SLADE, K.C., MR. DEREK CURTIS-BENNETT, K.C.,  
and MR. JAMES BURGE appeared on behalf of the Prisoner.

FIRST DAY.—MONDAY, 17TH SEPTEMBER, 1945

PLEA

THE CLERK OF THE COURT: William Joyce, you are charged in an indictment containing three counts with high treason. The particulars in the first count are that on the 18th September, 1939, and on other days between that day and the 29th May, 1945, you, being a person owing allegiance to our lord the King, and while a war was being carried on by the German Realm against our King, did traitorously adhere to the King's enemies in parts beyond the seas, that is to say, in Germany, by broadcasting propaganda. In a second count of the same indictment it is charged that you, on the 26th September, 1940, being a person owing allegiance as in the other count, adhered to the King's enemies by purporting to become naturalised as a subject of Germany. And in a third count the particulars are the same as in the first count, that is to say, you are charged with broadcasting propaganda, but the dates are different, and the dates in this case are the 18th September, 1939, and on days between that day and the 2nd July, 1940. Are you guilty or not guilty?

THE PRISONER: Not guilty.

THE CLERK OF THE COURT: There is another indictment against you. (*The Judge intervened.*)

(*Jury duly sworn.*)

THE CLERK OF THE COURT: Members of the jury, the prisoner at the Bar, William Joyce, is charged in an indictment containing three counts: each of those charges is a charge of high treason. In the first count the particulars are that on the 18th September, 1939, and on other days between that day and the 29th May, 1945, he, being a person owing allegiance to the King, while a war was being carried on by the German Realm against the King, did traitorously adhere to the King's enemies by broadcasting propaganda. In the second count it is charged that he, on

the 26th September, 1940, being a person owing allegiance as before, did traitorously adhere to the enemies of the King by purporting to become naturalised as a subject of Germany. And in a third count the particulars are the same as those in the first count, that is to say, it is another charge of broadcasting propaganda on the 18th September, 1939, and on other days between that day and the 2nd July, 1940. To this indictment he has pleaded Not Guilty, and it is your charge to say, having heard the evidence, whether he be guilty or not.

THE ATTORNEY-GENERAL: May it please your Lordship, members of the jury, in this case I appear with my learned friends Mr. Byrne and Mr. Gerald Howard to prosecute, and the prisoner is defended by my learned friends Mr. Slade, Mr. Curtis-Bennett and Mr. Burge; and, as you have just heard, the prisoner who is in your charge is William Joyce, and to-day, nearly six years since he first entered into the employment of the German Broadcasting Corporation, he comes before you on what is the gravest crime known to our law, upon an indictment for treason.

Members of the jury, may I, before I tell you anything about the details of this case, just make one or two preliminary observations to you in regard to it? It would be idle to shut our eyes to the fact that some of us may know or think we know something about this case.

We may in times past have read about this man in the newspapers; we may have discussed his activities—and indeed his activities were notorious enough—it may be even perhaps in those dark days of 1940 when this country was standing alone against the whole force and might of Nazi Germany, that some of us may have heard or thought we heard his voice on the wireless, attempting as we may have thought to undermine the morale of our people, and perhaps at that time some of us formed feelings of dislike and detestation at what he was doing, and perhaps later on some of us heard with a not altogether unnatural satisfaction that he had been apprehended and was to be brought to trial.

If any one of you had feelings of that kind about this man I ask you, as I know you will, to cast them entirely from your minds. You are sworn, you know, to try this man according to our law and upon the evidence alone. I daresay that in the years to come in the pages of history it will count for nothing what happens to William Joyce in the course of this trial. He will leave no mark upon those pages, but it may count for a great deal that we who in our various activities are concerned in this trial to do and comport ourselves in accordance with the best traditions of English law, that we should try this man according to the law without fear or favour, affection or ill-will, on the evidence, unprejudiced by any preconceived notions, coldly, dispassionately, on the evidence, and on that alone. So best shall we sustain that great record of impartiality and equal justice which British courts and British juries hold in the eyes of the whole civilised world.

Then there are two other matters to which I would like to refer before I tell you anything about the details of this case: two matters which you should have in mind throughout the observations which I shall have to make to you, and indeed throughout the whole course of this trial, and the first is this. In this case, exactly as in every other case, it is for the Prosecution to make out their case against the prisoner. It is for the Prosecution to establish that case beyond doubt; and if at the end of it, when you have heard the whole of the evidence and you come to consider the matter under the direction of my Lord, you are left with any doubt—not any frivolous, fantastic speculation, but any reasonable doubt such as you would allow to affect your conduct in your ordinary affairs of business or everyday life—then you will resolve the matter in favour of

the prisoner, for that would mean that the Prosecution had failed to make out their case against him.

Secondly, members of the jury, there is this. This case, as every other case, consists partly in matters of fact and partly in considerations of law. Matters of fact are for you, matters of law are for my Lord. Presently, under the direction of my Lord as to the law, you will arrive at your own independent conclusion on the facts and on the evidence that has been called before you, and when in the course of this case I have occasion to refer to the facts, you must not accept them from me; you must wait until they come to be proved in the evidence, as they will be proved. And so also in regard to the law, I shall have occasion in opening this case to you to indicate how the law is put on behalf of the Prosecution, but I shall be doing no more than putting a submission as to the law on behalf of the Crown, subject always to my Lord's better judgment. I shall be doing that in order that it should be understood from the beginning how the Crown put this case, and in order, when you come to consider the facts, that you should see them in the legal framework which the Crown suggests is appropriate to them in this case; but remember when I refer to any legal matter it is always subject to the later correction and direction of my Lord, and you will not take the law from me but from my Lord when he sums up this case to you.

Members of the jury, the prisoner, as you have heard, is charged with treason. There are a number of varieties of treason known to our law, all of them striking in a greater or lesser degree at the security and safety of the State, but the treason which is charged against this prisoner in each of the three counts of this indictment is perhaps the most serious of them all, the treason of giving aid and comfort to the King's enemies, to use the old language of our law which has come down to us for six hundred years—the treason of adhering to the King's enemies, the treason of assisting Germany in her war against our country and our King.

Whether or not the prisoner's activities did Germany more harm than good is a matter about which it will not be necessary for us to speculate. On the 1st September, 1944, the prisoner—whether with pride or shame I cannot tell you, for I do not know—received from Hitler himself the award of the Cross of War Merit for his services to Germany during the war. When you have heard the evidence in this case you will not be left with the slightest shadow of doubt but that throughout the war, from the beginning to the end of it, this prisoner was assisting the Germans and adhering to the King's enemies.

Now, members of the jury, that alone is not enough to make this man guilty of the offence of treason. Not everybody who assists the King's enemies is capable of committing the crime of treason. A German soldier fighting in the uniform of his country may be made a prisoner of war, but he cannot be convicted of treason, for he would be fighting for his own people and his own country and under no debt or duty of loyalty or faithfulness to the British Crown. Only those can be convicted of treason who owe a duty of loyalty and faithfulness to the British Crown; only those can be convicted of treason who, in the language of our law, the language that you have heard read in this indictment, owe a duty of allegiance to the Crown, and the first thing that you must have prominent before your minds throughout the whole course of this case is: did this prisoner owe a duty of allegiance to the British Crown?

Now, members of the jury, the very basis of allegiance is this; and I am using now the language of Blackstone, one of the old masters of English law: that so long as the Prince affords protection to his subjects, so long that subject owes a debt of allegiance to the Prince. Protection by the



Prince, by the Crown, by the State—protection on the one hand and allegiance on the other hand are, in the submission of the Crown, reciprocal things, correlative things; the two go together. “Protection”—and again I am using the words of one of our great Judges of olden times—“*Protection draws allegiance, just as allegiance draws protection.*” Those who are placed or who place themselves under the protection of the Crown owe the Crown a duty of allegiance so long as that protection continues.

The usual case, the common case of protection and allegiance, arises in the case of an ordinary natural-born British subject, the man who, either because he is native-born in this country, or because although born abroad he is born of British parents, has as his birthright the protection of the British Crown, and owes permanently the corresponding duty of allegiance to the British Crown. That is the common ordinary case such as most of us find ourselves in, but, although that is the ordinary case and the common case, it is not the only case, and from the most ancient times our law has recognised that aliens, people of foreign birth and foreign nationality, may place themselves under the protection of the Crown, and that whilst they remain under that protection they may owe and do owe a duty of allegiance to the Crown.

In the past it was rarely possible for the Crown to extend that protection beyond our own dominions, beyond the Crown's own realm, and so that allegiance which was due from a foreigner was then called local allegiance because it existed only so long as the alien remained within the locality over which the Crown had jurisdiction; beyond that locality the Crown had no power of exercising protection. But in more modern times, owing to the growth of International Law, the growth of diplomatic usage, the Crown is able in some respects to extend its protection to subjects beyond the seas in whatever countries they may go to; and it is the case here for the Crown that whatever his nationality, whether he was British or whether he was not British, this prisoner is a man who had claimed and asserted the right to British citizenship, who had received the protection which is accorded by the Crown to British citizens, who had clothed himself in the full status of a British subject, and who in consequence owed a duty of allegiance to the Crown.

Now, members of the jury, having told you that by way of preliminary observations about this case, having indicated to you how the Crown puts the law with regard to this case (subject always to my Lord's later correction and direction) let me tell you something about the actual facts.

When this man was apprehended, after he was apprehended, there was found amongst his property acknowledged by him a birth certificate purporting to show that he had been born in America of a father whose birth was recorded as having taken place in Ireland. Later in the course of a statement which he made and which I shall presently read to you, he said that he had been born in America in 1906, that his father had been born in Ireland and his mother in England, but that before his birth in America they had both of them become naturalised as citizens of the United States.

Members of the jury, if that is true—and this is a matter about which you will have to make up your minds when you have heard the whole of the evidence in this case—it would mean that at all times material to this case the prisoner was an American citizen, owing no natural duty of allegiance to the British Crown, but still capable as an alien of placing himself under the protection of the Crown, of clothing himself with the status of a British subject and thereby acquiring and taking upon himself an obligation to be loyal and faithful to the British Crown. Now let us see what in fact he did do.

In 1922 he appears to have been living, apparently with his father, in this country, in Oldham in Lancashire, and it seems that he was a student at the London University, and on the 9th August, 1922, he wrote a letter to the officer commanding the London University O.T.C., which he was desirous of joining. You will hear the whole of the letter; you will have it, and I will not bother you with all the details of it now, but in the course of the letter he says this: "I must now mention a point which I hope will not give rise to difficulties. I was born in America, but of British parents. I left America when two years of age, have not returned since, and do not propose to return. I was informed at the Brigade Headquarters of the district in which I was stationed in Ireland that I possessed the same rights and privileges as I would if of natural British birth. I can obtain testimonials as to my loyalty to the Crown. I am in no way connected with the United States of America, against which, as against all other nations, I am prepared to draw the sword in British interests. As a young man of pure British descent, some of whose forefathers have held high positions in the British Army, I have always been desirous of devoting what little capability and energy I may possess to the country which I love so dearly."

That matter was inquired into. Some communication was sent to the prisoner's father, and in the result he was admitted to membership of the London University O.T.C. Whether the statement in that letter as to his British nationality be true or not, this at least is apparent, that at that time he was not unwilling to represent himself and to contract upon the basis of being entitled to all the rights and privileges of British citizenship.

Members of the jury, eleven years later we come to another matter of written record in this case. On the 4th July, 1933, the prisoner made an application to the British Foreign Office for a passport, a British passport. You will see the application form; it will be proved in evidence before you, and again I am not going to read out all the details as to this man's history which it contains, but there are just three matters to which I would invite your particular attention when you come to look at the document yourselves. It contains in heavily leaded type a notice under the heading "Important." "Applicants and persons recommending them are warned that, should any of the statements contained in their respective declarations prove to be untrue, the consequences to them may be serious," and then in a note indicating how people are to fill in the form there is this: "State exact national status, e.g. a British Subject by Birth or a British Subject by naturalisation, British-protected person, etc. In the case of a British Subject by naturalisation see Rule 5 at Back." And then, having been warned in that way, having had his attention directly drawn to what he was to state in regard to his nationality, he says this, "I, the undersigned, William Joyce"—and he gives his address, a London address—"hereby declare that I am a British subject by birth, having been born at Rutledge Terrace, Galway, Ireland, on the 24th day of April, 1906; and not having lost the status of British subject thus acquired, I hereby apply for a passport for travelling"—and then he lists a number of places to which he wants to travel, as he says, for the purpose of holiday touring.

Then, members of the jury, five years later, on the 24th September, 1938, he makes an application for a renewal of that passport, the passport itself having been issued to him in the first instance for a period of five years. And in the course of that application, on the application-form that he had to fill in his attention was again called to the importance of the fact that the statements that he might make in the form should be true: "Applicants and persons recommending them are warned that, should any of the statements contained in their respective declarations prove to be untrue,

they will render themselves liable to prosecution." You will see it was put a little more strongly in this renewal form at that time than it had been in the original application form, and again he was required to insert his exact national status, and again he said, "I declare that I am a British subject by birth and I have not lost that national status, and that the whole of the particulars given by me in respect of this application are true." On that, the passport was renewed for a further year, and then on the 24th August, 1939, on the very eve of the war in which this country became involved, he applied again for a further renewal of his British passport, and again under the same warning, with the same direction to state exactly his national status, he declared again that he was a British subject by birth, and that he had not lost that national status, and that the whole of the particulars given by him in respect of his application were true.

On the strength and on the faith of that original application and of the two applications for renewal, a British passport was issued to William Joyce and was renewed in 1938 and in 1939, and that, in the submission of the Prosecution, is a vital part of this case. Whether the statement that he was born in Ireland was true or not, whether the statement that he was a British subject, whether by birth in Ireland or by birth in America of British parents, was true or not, the submission of the Crown is that, so long as that British passport continued to be valid, so long as it was held by him, it placed him, in whatever country he chose to go, in exactly the same position under the protection of the British Crown as would be any other British subject holding a British passport properly obtained. It placed him under the protection of the British Crown, it clothed him with the status of a British subject, and it required from him the duty of faithfulness and allegiance to the British Crown in return.

Members of the jury, the words with which a British passport opens are not idle words. Let me read them to you. You will see the whole document, but let me read them to you, sanctified and recognised as they are by international diplomatic usage. This one, issued to this man in 1933 and renewed in 1938 and again for a further period of a year in 1939, said this: "We, Sir John Allsebrook Simon, a Member of His Majesty's Most Honourable Privy Council, Knight Grand Commander of the Most Exalted Order of the Star of India, Knight Commander of the Royal Victorian Order, Officer of the Most Excellent Order of the British Empire, a Member of Parliament, etc., etc., His Majesty's Principal Secretary of State for Foreign Affairs, request and require in the name of His Majesty all those whom it may concern to allow the bearer to pass freely without let or hindrance, and to afford him every assistance and protection of which he may stand in need." Members of the jury, in a foreign country, friendly, neutral or belligerent, that passport entitled this man to be accorded all the rights and all the protection due to a British subject; nor were those rights insignificant even in Germany, even in time of war. In Germany in time of war William Joyce, as the holder of this British passport, was entitled to all those rights which by international law one belligerent power owes to the subjects of another. Those rights Germany could disregard only at her peril, at the peril of reprisals being taken against German subjects held in this country, at the peril of satisfaction being demanded for any wrongs that might have been done to William Joyce, at the end of the war; and in the meantime, possessed of those rights, he enjoys the full protection which the neutral power looking after British interests in Germany in time of war was able to accord to him, and he would have been entitled, had he so desired, to call upon that neutral power for whatever assistance or protection he might have required.

We say that in those circumstances he had not merely clothed himself

with the status of a British subject; he had, so to speak, enveloped himself in the Union Jack, secured for himself the greatest protection that he could secure. You may think it is small wonder that in those circumstances the Prosecution here say that he was required to comport and demean himself as a loyal British subject owing allegiance to the British Crown.

Now let us see what in fact he did do. On the 24th August, 1939, he applied for a renewal of this passport. War at that time, as you will remember, was imminent between the two countries, and within a few days, no doubt thinking, however mistakenly, that he was deserting the sinking ship, he left this country for Germany. On the 3rd September war broke out. Nor did this man, who had protested to love this country so dearly and to be ready to draw the sword in favour of it, lose much time in associating himself with our enemies. After he was apprehended there was found amongst his property a document signed by him, called, I think, a German work-book, a record which apparently was to be kept of the various employments into which a person might enter. It was issued to him early in October of 1939, and it showed or purported to show that on the 18th September, within a fortnight of the outbreak of war, he had been engaged by the German broadcasting organisation as an editor, speaker and announcer of English news, and at once he commenced broadcasting. You will hear that either at the end of September or early October he was heard by somebody in this country familiar with his voice, announcing with singular disregard of the facts—because at that time not a bomb had been dropped in either place—that Dover and Folkestone had been destroyed. I shall not bother you with the details of the various broadcasts about which you will hear, but throughout the war from the beginning to the end he was broadcasting over the network of the German broadcasting system propaganda to this country.

Members of the jury, in the work-book, which you will see and have an opportunity of studying—it is in German, of course, but it will be translated—he is described as a British subject, and under the heading of "Special Qualifications" is the word "English." I cannot tell you, for I do not know, whether that means that his special qualification was that he could speak English, or that he *was* English, but you will probably have little doubt about this, that it was because he was a British subject that he had his great value, if he had indeed any value to the Germans at that time. They wanted him to broadcast as a British subject to his own people in the hope, the vain hope, that he might undermine the morale of his own people and seduce some of them from their allegiance to the British Crown.

Records were kept of the various broadcasts which he made from time to time, and indeed from day to day. In 1942 he appears to have been appointed to the superior position of head commentator in the English section at a salary of 1,200 marks a month, and when the Luxemburg Station was captured by the British troops in May of this year there was found there a receipt showing that he had been paid fifty marks for each of four broadcasts that he had made apparently from that station in the course of the preceding year. As I told you, in that year on the 1st September, 1944, he received the distinction from Hitler of the award of the Cross of War-Merit of the First Class.

Members of the jury, in respect of those matters he is charged with high treason in the first count of this indictment, in the first of the three counts of this indictment, with adhering to the King's enemies between the 18th September, 1939, the date according to the Work Book from which he was first engaged by the German Broadcasting Corporation, until the 29th May, 1945, the day on which he was apprehended.

On that day, the 29th May of this year, two British officers were gathering wood for a fire in some forest in Germany near the Danish frontier, and whilst they were there looking for wood to collect, a man came along and indicated to them where there was some loose wood lying about, and he spoke to them at first in French, but later again, to indicate where there was some more wood, he spoke in English, and his voice was immediately recognised. And one of the officers said to him, "You wouldn't be William Joyce, would you?" or, "Would you be William Joyce?"—I have forgotten the exact phrase; there is nothing turns on it. "Would you be William Joyce?" And, when that was said, this man made a movement with his hand towards his pocket, which one of the officers—mistakenly, as it turned out—thought was in order to draw a firearm, and that officer, with perhaps more mercy than many people would have shown in the circumstances, shot him in the leg. As it turned out, he was not armed; but you may think that that officer was not unwise in taking every precaution against the possibility of some treachery. At all events, no harm was done; he was injured in the leg, and in due course he recovered and he was subsequently searched. In his possession there was found, not this time a British passport, but some form of German passport, some form of German pass, and in that document he was recorded as being of German nationality, formerly British-German, formerly British—and in the course of a statement that he subsequently made he said that he had become naturalised as a German subject some time in September, I think it was 1940.

Members of the jury, if at that time, if in September, 1940, he was a British subject and not, as he later alleged, an American, then to become naturalised as a German when Germany was at war with this country would in itself be an act of treason against this country and against the Crown, and in respect of that matter of becoming naturalised at that time he is separately charged with treason in count 2 of the indictment.

Then on the 31st May, after being duly cautioned and warned that he need not say anything, he made a statement and this is what he said: "I was born in Brooklyn, U.S.A., on 24th April, 1906. My father was Michael Joyce and my mother Gertrude Emily Brooke. My father was born in Ireland in or near Ballinrobe, and my mother was born in Lancashire at Shaw. I understand, though I have no documents to prove any statement, that my father was American by naturalisation at the time of my birth, and I believe he lost his American citizenship later through failing to renew it because we left America in 1909, when I was three years old. We were generally counted as British subjects during our stay in Ireland and England. I was in Ireland from 1909 till 1921, when I came to England. We were always treated as British during the period of my stay in England whether we were or not. In 1940 I acquired German nationality. I believe the date was 26th September, but the certificate of naturalisation is not in my possession. The only evidence I can offer in support of my statement is the entry in my *Wehrpass* issued subsequently to my naturalisation, where I am put down as of German nationality." That is the document I referred to, the German pass, in which he is recorded as "German, formerly British." "I have been cautioned that I am not obliged to say anything. I understand that proceedings may be taken against me and that whatever I say may be written down and given in evidence."

Then he went on to say this: "I take this opportunity of making a preliminary statement concerning the motives which led me to come to Germany and to broadcast to Britain over the German radio service. I was actuated not by the desire for personal gain, material or otherwise,

but solely by political conviction. I was brought up as an extreme Conservative with strong Imperialist ideas, but very early in my career, namely, in 1923, became attracted to Fascism and subsequently to National Socialism. Between the years 1923 and 1939 I pursued vigorous political activities in England, at times as a Conservative but mainly as a Fascist or National Socialist. In the period immediately before the war began I was profoundly discontented with the policies pursued by British Governments, first because I felt that they would lead to the eventual disruption of the British Empire, and secondly because I thought the existing economic system entirely inadequate to the needs of the times. I was very greatly impressed by constructive work which Hitler had done for Germany and was of the opinion that throughout Europe as also in Britain there must come a reform on the lines of National Socialist doctrine, although I did not suppose that every aspect of National Socialism as advocated in Germany would be accepted by the British people.

"One of my dominant beliefs was that a war between Britain and Germany would be a tragedy, the effects of which Britain and the British Empire would not survive and I considered that a grossly disproportionate influence was exerted on British policy by the Jews who had their reasons for hating National Socialist Germany. When in August, 1939, the final crisis emerged I felt that the question of Danzig offered no just cause for a world war. As by reason of my opinions I was not conscientiously disposed to fight for Britain for Germany—I think that means 'for Britain against Germany'—I decided to leave the country since I did not wish to play the part of a conscientious objector and since I supposed that in Germany I should have the opportunity to express and propagate views the expression of which would be forbidden in Britain during time of war. Realising, however, that at this critical juncture I had declined to serve Britain, I drew the logical conclusion that I should have no moral right to return to that country of my own free will and that it would be best to apply for German citizenship and make my permanent home in Germany.

"Nevertheless it remained my undeviating purpose to attempt as best I could to bring about a reconciliation or at least an understanding between the two countries. After Russia and the United States had entered the war such an agreement appeared to me no less desirable than before, for, although it seemed probable that with these powerful allies Britain would succeed in defeating Germany, I considered that the price which would ultimately have to be paid for this help would be far higher than the price involved in a settlement with Germany. This belief was strengthened from month to month as the power of Russia grew, and during the later stages of the war I became certain that Britain, even though capable of gaining a military triumph over the Germans, would in that event be confronted with a situation far more dangerous and complicated than that which existed in August, 1939; and thus until the very last moment I clung to my hope of an Anglo-German understanding, although I could see that the prospects thereof were small.

"I know that I have been denounced as a traitor and I resent the accusation, as I conceive myself to have been guilty of no underhand or deceitful act against Britain, although I am also able to understand the resentment that my broadcasts have, in many quarters, aroused. Whatever opinion may be formed at the present time with regard to my conduct, I submit that the final judgment cannot be properly passed until it is seen whether Britain can win the peace.

"Finally, I should like to stress the fact that, in coming to Germany and in working for the German radio system, my wife was powerfully influenced by me. She protests to the contrary, but I am sure that, if I

had not taken this step, she would not have taken it either. This statement has been read over to me and it is true."

Now, members of the jury, that is really the whole of this case. That this man adhered to the King's enemies you will not have the slightest shadow of doubt. If, on the whole of the evidence, remembering that the onus is on the Prosecution in this case as in every case, you come, under my Lord's directions, to the conclusion that this man was a British subject, then it is open to you to convict him on counts 1 and 2 of this indictment.

Count 3 stands in rather a different position and is put on a different basis, and I invite your very closest attention to it throughout the hearing of this case. Count 3, as you will have observed, covers the period up to the 2nd July, 1940. It was on the 2nd July, 1940, that the British passport which had been renewed to this man in August of 1939 came to an end, and it is in respect of that period covering the validity of the British passport that count 3 of this indictment is laid. It alleges against the prisoner that between those dates, the 18th September, 1939, when he entered into the employment of the German Broadcasting Company, and the 2nd July, 1940, when the passport came to an end, being between those dates a person owing allegiance to the Crown, he adhered to the Crown's enemies.

Members of the jury, if, under and subject to my Lord's direction in regard to the law, you come to the conclusion that this man was under the protection of the British Crown between those dates, and again under my Lord's direction, you come to the conclusion that he owed a duty, a corresponding duty of allegiance, then, even if you are not satisfied that he was of British nationality and acquit him on the first two counts in this indictment, it would be open to you, under my Lord's direction, to convict him on the third count.

Now that is the whole of this case. I have no desire, my learned friends have no desire either, to exaggerate the facts against this man or in any way at all to strain the law applicable to cases of this kind; and you will try this case serenely indifferent to the consequences so far as they may affect William Joyce whether your verdict be one of guilty or not—anxious only, as I indicated to you when I commenced my opening, to maintain the great traditions of the English law for equal and impartial justice.

Now, with the assistance of my learned friends, I shall call the evidence before you.

GLADYS WINIFRED ISAAC, *Sworn.*

*Examined by MR. BYRNE.*

- Q. Is your name Gladys Winifred Isaac? A. Yes.
- Q. Are you an assistant secretary to the University of London Military Education Committee? A. Yes.
- Q. Does that administer the regulations of the Senior Training Corps? A. Yes.
- Q. Before the war that was known as the Officers' Training Corps, Senior Division? A. Yes.
- Q. Are you in charge of the records of the ex-cadets of the Officers' Training Corps? A. Yes.
- Q. First of all, will you kindly look at a letter signed by William Joyce, dated 3rd August, 1922? Is it a document from your records? A. Yes.
- Q. Does it bear the address, 86 Brompton Street, Oldham, Lancs, 3rd August, 1922. Dear Sir, Will you kindly forward, or inform me as to how I may obtain a copy of the University of London Officers' Training Corps Handbook, and oblige, Yours faithfully, William Joyce"? Is that right? A. Yes.

- Q.** Do you produce a letter from your records dated 9th August, 1922, signed "William Joyce"? Does that bear the address, "86 Brompton Street, Oldham, Lancs., 9th August, 1922. Dear Sir, I received this morning the Corps Handbook for which I thank you. It is my intention, if possible, to study with a view to being nominated by the University for a Commission in the Regular Army. I have served with the irregular forces of the Crown in an Intelligence capacity against the Irish guerillas. In command of a squad of sub-agents I was subordinate to the late Capt. P. W. Keating, 2nd R.U.R., who was drowned in the 'Egypt' accident. I have a knowledge of the rudiments of musketry, bayonet fighting, and squad drill. I must now mention a point which I hope will not give rise to difficulties. I was born in America, but of British parents. I left America when two years of age, have not returned since, and do not propose to return. I was informed at the Brigade Headquarters of the district in which I was stationed in Ireland, that I possessed the same rights and privileges as I would if of natural British birth. I can obtain testimonials as to my loyalty to the Crown. I am in no way connected with the United States of America, against which, as against all other nations, I am prepared to draw the sword in British interests. As a young man of pure British descent, some of whose forefathers have held high positions in the British Army, I have always been desirous of devoting what little capability and energy I may possess to the country which I love so dearly. I ask that you may inform me if the accident of my birth, to which I refer above, will affect my position. I shall be in London for the September Matriculation Examination, and I hope to commence studies at the London University at the beginning of the next academic year. I trust that you will reply as soon as possible, and that your reply will be favourable to my aspirations. Thanking you for your kind promise of interview. I am, Sir, Yours faithfully, William Joyce"? **A.** Yes.
- Q.** Miss Isaac, were inquiries then made of the prisoner's father after that letter had been received? **A.** Yes.
- Q.** As a result of those inquiries was an enrolment form in the Officers' Training Corps received by the University signed William Joyce? Will you be good enough to look at it? Is that dated 21st October, 1922? **A.** Yes.
- Q.** Is it headed: "University of London Officers' Training Corps. Form of Contract. To the Officer Commanding. Sir, Being desirous of enrolment as a Cadet in the University of London Contingent, Officers' Training Corps, I hereby agree, in consideration of your permitting me to be so enrolled, to be bound by the conditions and regulations applicable to, and by the rules of, the said contingent at present or from time to time hereafter in force; and I undertake to conform to all such conditions, regulations and rules from the date of my enrolment until such time as my resignation from the Corps has been tendered and duly accepted. Your obedient servant"? Then is there a signature "William Joyce" over a sixpenny stamp? **A.** Yes.
- Q.** And the date, 21st October, 1922? **A.** Yes.
- Q.** I think on the next page of that document there are certain particulars, and is it headed, "Particulars to be filled in by Applicant"? **A.** Yes.
- Q.** Does it read: "Surname: Joyce. Christian Names: William. Place of Birth: New York. Date of Birth: 24th April, 1906. Permanent Address: 10 Longbeach Road, S.W.11. Present Address: 10 Longbeach Road, S.W.11. School or Institution of the University (if any): Battersea Polytechnic, B'beck"? **A.** That has been put in afterwards.
- Q.** "Birkbeck," that would be? **A.** It is "Birkbeck," but it has been put in afterwards.
- Q.** "State whether you are a Matriculated Student of the University: Yes.



Course of Study: Intermediate Science. Public or other School at which previously educated:—Previous Military Service (if any): Worcestershire (four months). No Cert. 'A.' "That means "No Certificate 'A' "? A. He had not at that time, but he had later.

- Q. "State which of the units of the Contingent you desire to join: Infantry." A. Yes.
- Q. Do you also produce a receipt of Certificate 'A' ? Does it read: "Please acknowledge receipt of enclosed Certificate 'A' (Infantry) Capt. and Adjutant, University of London O.T.C., 46 Russell Square, London, W.C.1," and then there is the receipting signature: "William Joyce, 22nd June, 1922" ? A. 1925.
- Q. 1925, I beg your pardon. Do you also produce two Re-engagement Contracts, one of them dated 22nd July, 1924 ? A. Yes.
- Q. The other one dated 6th October, 1925 ? Is that right ? A. Yes.
- MR. JUSTICE TUCKER: Is that the date ? A. Yes.
- MR. BYRNE: Does each of them bear the signature "William Joyce" ? A. Yes.

*Cross-examined by MR. SLADE.*

- Q. Miss Isaac, having received the letter which you told us about from William Joyce, did you write to William Joyce's father on the 23rd October, 1922 ? A. It was written in the office; I don't think I actually wrote it, but it was written in my office.
- Q. In the office amongst the records was a letter ? A. Yes.
- Q. Have you a copy of it there ? "23rd October, 1922. (Blank) Joyce Esq., 86 Brompton Street, Oldham, Lancs. Dear Sir, Your son, William Joyce, has seen me with a view to joining the University of London O.T.C., and has also spoken of his desiring to register as a candidate for a Commission in the Regular Army. It appears however that he is in doubt as to whether he is a 'British subject of pure European descent.' From what he tells me I think he comes within this definition, as he says you were never naturalised as an American. Perhaps, therefore, you would confirm this point, when I shall be able to proceed with his enrolment and registration." That is a copy of a letter which was written from your office to the father of William Joyce ? A. Yes.
- Q. Do you produce the original of what purports to be a reply, signed, "M. F. Joyce," dated 26th October, 1922, from 86 Brompton Street, Oldham ? "Capt. Peploe, Adjutant, U.L. O.T.C. Dear Sir, Your letter of 23rd October received. Would have replied sooner but have been away from home. With regard to my son William. He was born in America, I was born in Ireland, his mother was born in England. We are all British and not American citizens." I don't suppose you saw that letter when it came, did you, or did you not ? A. I have no recollection of seeing it.
- Q. At any rate, if you had seen it, you would have seen that the point that the letter asked to be confirmed—which was William Joyce's statement that his father was never naturalised as an American—is not in fact replied to in that letter ? A. No.
- Q. Will you be good enough to look at the copy letter of the 23rd October that I have just asked you about ? Will you take it in your left hand and that one in your right ? I think the letters speak for themselves. Do you see ? "From what he tells me, I think he comes within this definition as he says you were never naturalised as an American. Perhaps therefore you would confirm this point." That is the information requested by the letter ? A. I think he says: "We are not American citizens."
- Q. You put the statement "We are not American citizens" as confirmation of the statement that he was never naturalised as an American ? A. Yes.

HAROLD GODWIN, *Sworn.*

*Examined by MR. HOWARD.*

- Q. Mr. Harold Godwin, is that your name? A. Yes.
- Q. Are you an Assistant Passport Officer at His Majesty's Passport Office of the Foreign Office? A. Yes.
- Q. Will you look at this? Is it an application form for a British passport, accompanied by a covering letter? A. Yes.
- Q. Taking the covering letter first, is it headed "41 Farquhar Road, S.E.19. The Passport Office," dated 4th July, 1933? A. Yes.
- Q. "Gentlemen, I enclose herewith an application for a passport, two photographs, and a postal order for fifteen shillings. Despatch of the passport through the post would be of great convenience to me. I am, Sirs, Your obedient servant, William Joyce"? A. Yes.
- Q. Then will you be good enough to look at the application form itself. Does there appear in the directions to persons who are making the application, under the heading "D": "State exact national status, e.g., a British subject by birth, or a British subject by naturalisation, British-protected person, etc."? A. Yes.
- Q. Then under the heading: "Declaration to be made by Applicant for Passport," is it headed, "London, 4th July, 1933"? A. Yes.
- Q. "I, the Undersigned, William Joyce, at present residing at 41 Farquhar Road, S.E.19, London, hereby declare that I am a British Subject by birth, having been born at Rutledge Terrace, Galway, Ireland, on the 24th day of April, 1906; and not having lost the status of British Subject thus acquired, I hereby apply for a passport for travelling to Belgium, France, Germany, Switzerland, Italy, Austria, for the purpose of holiday touring." Then does it purport to be signed a little lower down, "William Joyce"? A. Yes.
- Q. And at the bottom of the form, under the heading of "Important" are there these words: "Applicants, and persons recommending them, are warned that, should any of the statements contained in their respective declarations prove to be untrue, the consequences to them may be serious"? A. Yes.
- Q. Upon that application, which was accompanied, I think, by a photograph of the applicant—is that right?—was a passport granted? A. Yes, passport No. 125943.
- Q. That is the number which appears in the top right-hand corner of the application form? A. Yes.
- Q. When was it granted? A. On the 5th July, 1933.
- Q. For what period? A. A period of five years.
- MR. HOWARD: My Lord, notice to produce that passport has been given to the Defence; the Prosecution now call for it.
- MR. SLADE: My Lord, I am not in a position to produce it; my friend may use a copy.
- MR. HOWARD: Mr. Godwin, are you familiar with the form of passport that was issued by the Foreign Office to British subjects at this time? A. Yes.
- Q. Have you a specimen form of passport exactly similar so far as the formal wording is concerned, as the one which was issued to William Joyce? A. Yes.
- Q. Will you look at this? I think it is just inside the cover or front page; is there a sixpenny stamp? A. Yes.

*(Specimen passport put in.)*

- Q. "We, Sir John Allsebrook Simon," as he then was; then follow his various

- Q. Whilst you were at Folkestone between the 3rd September and the 10th December, do you recollect listening to a broadcast that attracted your attention from what was said in it? A. Yes.
- Q. Did you recognise the voice of the person who was broadcasting? A. Immediately.
- Q. As whose? A. As the prisoner's.
- Q. The prisoner's voice. Can you give the jury any closer date than simply between the 3rd September, 1939, and the 10th December, 1939, that you heard that voice? A. To the best of my recollection it was about during the first month after the outbreak of war.
- Q. Some time, then, during September or perhaps early October 1939? A. Yes.
- Q. Do you recollect anything that you heard the prisoner's voice say? A. Yes. He said that Dover and Folkestone had been destroyed.
- Q. Did that remain firmly in your memory for a very good reason? A. Yes.
- Q. What was the reason? A. Well, there had not been any enemy activity at all on Folkestone up to that date.
- Q. While you were at Folkestone up until the 10th December, 1939, did you ever hear him again on the wireless? A. Yes, on sundry occasions.
- Q. Did you take any particular note of what he said? A. No.
- Q. Having returned to London on the 10th December, 1939, did you after that hear his voice on the wireless on a number of occasions? A. Yes.
- Q. In 1940? A. Yes.
- Q. 1941? A. Yes.
- Q. 1942? A. Yes.
- Q. 1943? A. Yes.
- Q. And 1944? A. Yes.
- Q. Acting in the course of your duty, on the 30th January, 1943, did you make a shorthand note of what he said on the wireless? A. Yes, the 30th January.
- Q. If you will be good enough to look, is that your book in which you made shorthand notes of what you heard the prisoner say during the times that you listened to him after you had returned to London? A. Yes.
- Q. Is one of the dates the 30th January, 1943? A. Yes.
- Q. Another one the 8th April, 1943? A. Yes.
- Q. The 12th July, 1943? A. Yes.
- Q. Another one the 30th August, 1944? A. Yes.
- Q. Is this a transcript of your shorthand notes of what you heard him say on the 30th January, 1943? A. Yes.
- Q. Is it a correct transcription of your shorthand notes? A. It is.
- Q. Now will you look at this? Is it a correct transcription of your shorthand note of what you heard him say on the 8th April, 1943? A. The 9th April, 1943. I beg your pardon, it is the 8th April.
- Q. Then, if you will look at that, is that a correct transcription of your shorthand notes of what you heard him say on the 12th July, 1943? A. Yes.
- Q. Lastly, is this a correct transcription of your shorthand notes of what you heard him say on the 30th August, 1944? A. Yes.
- MR. BYRNE: My Lord, perhaps those transcripts should be read.
- MR. JUSTICE TUCKER: Well, do you want them all read entirely? Perhaps if you would choose such passages as you want to read to the jury, then Mr. Slade can read any other, and the jury at the appropriate time can see the passages.
- MR. BYRNE: Just take, first of all, the one of the 30th January, 1943. A. Yes.
- Q. It begins by the prisoner saying, "In this Proclamation which he addressed to the German people, the Führer first called to account the fourteen years'

struggle which preceded the victory of 30th January, 1933." A. That's right.

- Q. I don't think there is any particular matter in that until you get to the last two paragraphs but one. Do you see where it says, "The Führer's proclamation," and then it expresses his gratitude to his soldiers for the—and then I think you could not catch all the words—"being enacted from the far North to the African desert, from the Atlantic to the wide steppes of the East, from the Ægean to Stalingrad, an epic which will survive more than one millennium. It is the Führer's"—then you could not catch it all—"to the home front to remain worthy of the heroic deeds done by the troops." The proclamation continues: "The total endeavour of our nation must now be increased. The heroic fight of our soldiers on the Volga should be"—then there is a blank—"to do his utmost in the struggle for the freedom of Germany and thereby in the wider sense for the preservation of the whole continent. It was the desire of our enemies to threaten peaceful towns and villages with weapons of gruesome destruction. In the fracas which our foes forced upon us as they did before in 1914, the fracas which represents the 'to be or not to be' of our race, the Almighty will be the best Judge. Now our task is to fulfil our duties in such a way that before Him as the Creator of the Universe and in accordance with the"—then there is a blank—"given by Him for the battle of existence, we may stand without ever faltering." So much for that one. Then—

MR. JUSTICE TUCKER: There are two passages that Mr. Byrne has read. Did you understand those to be still part of Hitler's proclamation, or are those observations of the prisoner himself? A. They were part of the proclamation, my Lord.

- Q. They are all still part of the proclamation? A. Except the last paragraph, and in that paragraph they are the prisoner's own words.

MR. JUSTICE TUCKER: That is not the proclamation.

MR. BYRNE: Just let us look at it. It is a very short one. "From the ruins of our towns"—

MR. JUSTICE TUCKER: No, the "fracas" is the last one Mr. Byrne read? A. Yes, my Lord.

MR. BYRNE: Will you look at [your transcript of the 8th April, 1943]? There is only one passage there that I want to draw your attention to. It is a paragraph that begins, "There can be only one reason." Do you see that? A. Yes.

- Q. "There can be only one reason. The Prime Minister blinds himself to such prospects, however hypothetical they may be. He is the servant, not of the British public or of the British Empire, but of international Jewish finance. This charge must be preferred against a man who has so signally violated British tradition in the course of this war. If we take one example, the Anglo-American raid on Antwerp which resulted in the death of more than 2,000 peaceful Belgians and 300 innocent children, this provides a striking example of the complete lack of scruple actuating the conduct of the British Government. Belgium would never have been involved in the war at all. In essence and in substance the Belgians were abandoned by the British who had given them the most lavish promises of assistance, and now in broad daylight under conditions of excellent visibility these people are massacred, not because they are at war with the British, but because they no longer serve the purposes of the British Government. Such an act of malicious spite is not in my opinion typically British. It bears instead the hallmark of Jewish policy which has always been directed towards the eradication of Gentiles who could not be made to serve the interests of Hebrew domination." So much for that one.

If you look at [the transcript of the 12th July, 1943], if you look at the

last two paragraphs but one, do you see a passage that begins, "I do not propose at the present juncture"? A. Yes.

- Q. He is there talking about the Italian campaign. Do you see the words, "I do not propose at the present juncture to offer any help or advice beyond remarking that in Moscow at least, there is no disposition to consider this enterprise as a suitable and adequate discharge of an obligation undertaken by the British Government to attack Germany from the West in such a manner as to provide substantial and appreciable relief for the Soviet forces in the East. That the Germans should be gaining any ground, however large or however little, from the Bolsheviks whilst the assault on Sicily is proceeding, is a phenomenon which finds no place in the scheme of enemy strategy. There is no value in premature generalisations, but I do not think it rash to predict that in one respect there is a very special disappointment in store for the enemy. Churchill seems to have entertained some crazy notion that if only he could deliver a blow on Italian territory, Italy would collapse. It is evident already that the whole Italian nation is united as never before and inspired with the ardent determination to defend the Fatherland. This resolution need not be described, it will be shown in action. In the meantime the war against enemy merchant shipping is being vigorously pursued. In the course of armed reconnaissance over the Atlantic German planes set on fire two enemy vessels, one of them a liner of more than 20,000 gross registered tons. Moreover, it is announced that German U-boats have sunk another six merchantmen of 42,000 gross registered tons. Thus it is clear that British jubilation over the decrease in tonnage losses was, to say the least, ill-timed. As Admiral Lützwitz recently pointed out, the war at sea has its fluctuations, but these fluctuations do not prevent this also having a general tendency, and that tendency is to destroy the strategic co-ordination of the foe by disorganising and cutting off his supplies"? A. Yes.

- Q. Just look at [the transcript of the 30th August, 1944], will you, from the fifth paragraph which begins, "If you had lived in Germany during the first six months of the fifth year of the war, you would have wondered why such a high and comfortable standard of living was being maintained; why so many people were engaged upon tasks which were not essential to the concentrated prosecution of the war. The answer is that the Government of the Reich was not in any way neglectful of its duty or oblivious to existing potentialities, but it was thought well to hold large reserves in hand. In these generalisations, however, I must accept the disposition of the Home Army, a considerable part of which was kept from the fronts by those persons who have paid the just penalty and were instantaneously crushed on July 20th. In brief, Germany is in a position not only to defend itself but with the aid of time to win this war. The chief purpose of German strategy at the moment is to gain this time. Gaining time, however, does not mean sitting and waiting for something favourable to happen. It means causing something favourable to occur, and I can assure you that the German people have never been so active in their determination to shape the course of events. Our enemies may indulge in short-lived jubilation. There is no need to discourage them. This premature celebration will be transmuted into bitterness and colossal disappointment."

Then at the bottom do you see a passage, "When Mr. Cordell Hull announced that in the negotiations with Roumania, by which presumably he means King Michael and his cronies, the initiative will rest with Moscow, he is only confirming once again the fact that Roosevelt and Churchill have renounced in favour of Stalin all interest in Europe. On this occasion, as on many others, the White House speaks for the British Government as well as for itself"? A. Yes.

*Cross-examined by MR. SLADE.*

- Q. Inspector, I have to challenge your identification of the prisoner's voice on the occasions you referred to in the first months of the war. Did I understand you to say that you have never talked to the prisoner? A. Yes.
- Q. I think in fairness to you that was what you said at Bow Street, was it not? A. Yes.
- Q. And when the deposition was read over to you you did not notice that they had put down: "I have talked to him"? A. I don't recall that.
- Q. I am only bringing that out in fairness to yourself. What you intended to say and did say there, as here, was that you had never talked to him? A. That is true.
- Q. Of course, the statement that Dover and Folkestone had been destroyed, in September or up to the 3rd October, 1939, would have been fantastic? A. Not necessarily.
- Q. Not necessarily? A. It could have been destroyed.
- Q. Could have been? The statement was between the 3rd September and the 3rd October; I am taking the first months of the war. That statement was fantastic? A. Well, it was really, yes.
- Q. Let us see. No bomb of any description was dropped in this country until about September 1940, was it? A. I couldn't answer for that.
- Q. About a year afterwards? A. I don't know.
- Q. Don't you really know? A. No.
- Q. After you left Folkestone on the 10th December, 1939, were you stationed in London? A. Yes.
- Q. And have you been in this country all the war? A. Yes.
- Q. At any rate, leaving out September 1940, do you not know that no bomb was dropped on this country until months after September, 1939? A. Well, I can only speak from memory; but I remember the London blitz of the 7th September, 1940.
- Q. That is 1940? A. Yes.
- Q. Very well. Of course, you were at Folkestone, you say, when you heard this broadcast? A. Yes.
- Q. And you say you identified Joyce's as being the voice which used those words? A. Yes.
- Q. I am suggesting to you that you are mistaken? A. I am not mistaken.
- Q. To what station did you tune in? A. I don't know.
- Q. You don't know? A. No, I was just tuning in my receiver round the wavelengths when I heard the voice.
- Q. Just twiddling it round, you heard the voice? A. Yes.
- Q. Was all you heard the words, "Folkestone and Dover have been destroyed"? A. No, I heard something else, but I can't recall it.
- Q. Was all you heard that you remember that Folkestone and Dover had been destroyed? A. Yes.
- Q. Was that sufficient at once to discredit anything that Joyce might thereafter say in your mind? A. Yes.

*Re-examined by THE ATTORNEY-GENERAL*

- Q. You said that you had never talked to Joyce. Had you heard him talk? A. Yes.
- Q. Has he got a voice which you would recognise again? A. Yes.
- Q. Have you any doubt that it was that voice that you heard in September or early October, 1939? A. None whatever.
- Q. It is suggested to you that the statement that Dover and Folkestone had been destroyed would have been a fantastic statement, and we know now, of course, that no bombs had in fact been dropped in either of those places

at that time; but would that fact have been known to a British soldier abroad or by English-speaking listeners who may have heard that news at that time?

MR. SLADE: My Lord, is that a question that this detective-inspector can answer?

MR. JUSTICE TUCKER: Mr. Slade, you asked him the question whether it was fantastic or not, which is a matter of opinion. I merely propose to ask him whether it meant that it would have been fantastic to anyone who heard this in Folkestone or Dover, or whether he was himself of the opinion whether or not it would have been fantastic if heard by somebody anywhere else. A. No, just to people in Dover or Folkestone then, my Lord.

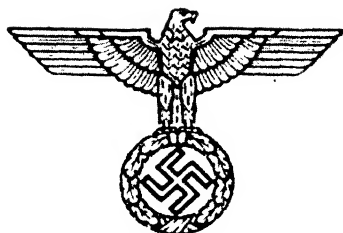
MR. JUSTICE TUCKER: Mr. Slade, just in the interests of accuracy and to do justice to everybody, the deposition that was taken has got the last witness down as saying, "I have not talked to him."

MR. SLADE: I am obliged, my Lord. The copy that we have been supplied with is, "I have." I knew it was a pure slip in the depositions.

ALEXANDER ADRIAN LICKORISH, *Sworn.*

*Examined by THE ATTORNEY-GENERAL.*

- Q. What is your full name, rank and unit? A. Captain, Reconnaissance Regiment, R.A.C.
- Q. And your full name? A. Alexander Adrian.
- Q. Lickorish? A. Yes, Lickorish.
- Q. On the 28th May of this year in the evening were you in company with a Lieutenant Perry in a wood in Germany, somewhere near the Danish frontier at Flensburg? A. I was.
- Q. Were you both engaged in gathering wood to make a fire? A. We were.
- Q. Whilst you were engaged in doing that did you see anybody? A. We came across a person who appeared to be walking in the woods.
- Q. Who was it? A. It was the prisoner.
- Q. Did he do or say anything to you? A. He indicated some fallen wood to us and said to us, "Here are a few more pieces."
- Q. In what language did he speak first? A. He spoke to us in French, and then afterwards in English.
- Q. What did he say in English, do you remember? A. The words "There are a few more pieces here" were spoken in English.
- Q. Did you recognise that voice? A. I did.
- Q. As what? A. As that of the announcer or the speaker on the German radio.
- Q. And after having some conversation with your companion, Lieutenant Perry, did you say something to the prisoner? A. Yes.
- Q. Did Lieutenant Perry say something in your presence? A. Lieutenant Perry accosted the prisoner.
- Q. What did he say? A. He said to him, "You wouldn't happen to be William Joyce, would you?"
- Q. What did the prisoner then do? A. The prisoner went to put his hand in his pocket, and Perry fired his revolver.
- Q. What happened? A. The prisoner fell to the ground, saying, "My name is Fritz Hansen."
- Q. What did you do? A. I, thinking the same as Perry that he was armed, rushed over to him to get his weapon from him, and searched him at the same moment and found two passports on his person.
- Q. Did you find any weapon? A. No, he was unarmed.
- Q. I think he was in fact wounded in the leg? A. He was wounded in the leg.




**IM NAMEN  
DES DEUTSCHEN VOLKES  
VERLEIHE ICH**

**DAS  
KRIEGSVERDIENSTKREUZ  
1. KLASSE**

**DER FÜHRER**

HITLER'S AWARD TO JOYCE



	<p>Unterschrift des Passinhabers</p> <p><i>Wilhelm Hansen</i></p> <p>ausgegeben am: 11. März 1908</p>
--	---

Es wird hiermit bescheinigt, daß der Inhaber die durch das obersiehende Lichtbild dargestellte Person ist und die darunter befindliche Unterschrift demselben vollständig zugeht.

Der Polizeipräsident  
Abt. II

*[Signature]*

PERSONENBESCHREIBUNG	
Name	<i>Hansen</i>
Geburtsort	<i>Geleus, Island</i>
Geburtsdatum	<i>11. März 1908</i>
Wohnort	<i>Lübeck</i>
Gesamth.	<i>Mittel</i>
Gesicht	<i>oval</i>
Farbe der Augen	<i>blau</i>
Farbe des Haares	<i>hellbraun</i>
Besond. Kennzeichen	<i>keine</i>
KINDER	
Name	Geburtsdatum
Alter	Geburtsort

JOYCE'S "WILHELM HANSEN" PASSPORT

Q. You then searched him, and you found what? A. I found two passports.

Q. Would you look at this? A. That is one of them.

Q. Is that a German passport? A. That is a *Reisepass*.<sup>1</sup>

Q. Would you look at this? What is this? A. That is the other one, a *Wehrpass*.<sup>2</sup>

THE ATTORNEY-GENERAL: My Lord, there will be evidence later translating this document, and if your Lordship pleases we propose to read them to the jury at that stage.

MR. JUSTICE TUCKER: Yes.

THE ATTORNEY-GENERAL: Then I think you treated his wound, and he was in due course taken down to the frontier post? A. That is correct.

Q. And you handed the two documents you found over to another officer? A. To the Guard Commander.

MR. SLADE: I have no questions to ask.

WILLIAM JAMES SCARDEN, *Sworn*.

*Examined by MR. HOWARD.*

Q. Is your name William James Scarden? A. Yes.

Q. Are you a Captain in the Intelligence Corps? A. I am.

Q. On the 16th May of this year did you carry out a search at the radio station at Luxemburg? A. I did.

Q. Amongst other documents did you find this there? A. Yes.

Q. It is a document in German and bearing upon it a signature? A. Yes.

Q. Purporting to be William Joyce? A. Yes.

Q. Have you seen the prisoner write? A. I have.

Q. And sign his name. In your view is that his signature? A. It is.

Q. On the 31st May of this year at about a quarter to 11 in the morning did you see the prisoner at a hospital in Lüneburg? A. Yes.

Q. Did you say anything to him? A. Yes.

Q. What? A. I told him my name, and I said, "I am charged with the duty of making enquiries into the activities of British subjects employed by the enemy during the course of the war. There is abundant evidence to show that you have been working for the German broadcasting services, and it is proposed to present a case to the Director of Public Prosecutions. I have to ask you certain formal questions relating to your nationality, and I must caution you that you are not obliged to say anything and that anything you do say will be taken down in writing and given in evidence should proceedings be taken."

Q. Did the prisoner make any answer to that? A. Yes, he said, "Of course I am quite prepared to answer questions, but I would like to consider whether I will make a statement or not."

Q. Did you put a number of questions to him? A. Yes.

Q. With regard to what? A. To his nationality.

Q. Did he reply to them? A. Yes.

Q. Did you make a note of his replies? A. Yes.

Q. Having done that, what did you say to him? A. I left him and told him that I would call again in the afternoon.

Q. Did you see him in the afternoon? A. Yes, at 2.30 p.m. the same day.

Q. What did he say then? A. Joyce said, "I would like to make a statement."

Q. You told my Lord and the jury you made a note of the replies made by the prisoner to the questions you put to him in the morning? A. Yes.

<sup>1</sup> Travel permit.

<sup>2</sup> Military passport.

- Q. Did you write down the statement that he made, or did he write it himself?  
 A. I wrote down the statement. First of all, I started the statement with the replies to the questions in the morning; and then I cautioned him and wrote a caution into the statement. The prisoner signed that caution and then he dictated the statement, which I wrote down at his dictation.
- Q. When it was completed did he read it through? A. I passed it to him, he read it through and then he signed it.
- Q. Will you look at this? A. Yes, this is the statement.
- Q. Is that the statement and also the replies to the questions that you had asked?  
 A. Yes.

MR. HOWARD: My Lord, it had better be read again.

MR. JUSTICE TUCKER: Yes.

MR. HOWARD: "74 General Hospital, Lüneberg, Germany. 31st May, 1945. Statement of William Joyce, who saith: I was born in Brooklyn, U.S.A., on 24th April, 1906. My father was Michael Joyce and my mother Gertrude Emily Brooke. My father was born in Ireland in or near Ballinrobe and my mother was born in Lancashire at Shaw. I understand, though I have no documents to prove my statement, that my father was American by naturalisation at the time of my birth and I believe he lost his American citizenship later through failing to renew it because we left America in 1909 when I was three years old. We were generally counted as British subjects during our stay in Ireland and England. I was in Ireland from 1909 till 1921 when I came to England. We were always treated as British during the period of my stay in England, whether we were or not. In 1940 I acquired German nationality. I believe the date was September 26th but the certificate of naturalisation is not in my possession. The only evidence I can offer in support of my statement is the entry in my *Wehrpass* issued subsequent to my naturalisation where I am put down as of German nationality. I have been cautioned that I am not obliged to say anything. I understand that proceedings may be taken against me and that whatever I say may be written down and given in evidence." Then does there follow the signature, "William Joyce"? A. Yes.

- Q. "I take this opportunity of making a preliminary statement concerning the motives which led me to come to Germany and to broadcast to Britain over the German radio service. I was actuated not by the desire for personal gain, material or otherwise, but solely by political conviction. I was brought up as an extreme Conservative with strong Imperialistic ideas, but very early in my career, namely, in 1923, became attracted to Fascism and subsequently to National Socialism. Between the years 1923 and 1939 I pursued vigorous political activities in England, at times as a Conservative but mainly as a Fascist or National Socialist. In the period immediately before this war began I was profoundly discontented with the policies pursued by British Governments, first, because I felt that they would lead to the eventual disruption of the British Empire, and secondly, because I thought the existing economic system entirely inadequate to the needs of the times. I was very greatly impressed by constructive work which Hitler had done for Germany and was of the opinion that throughout Europe as also in Britain there must come a reform on the lines of National Socialist doctrine, although I did not suppose that every aspect of National Socialism as advocated in Germany would be accepted by the British people.

"One of my dominant beliefs was that a war between Britain and Germany would be a tragedy, the effects of which Britain and the British Empire would not survive, and I considered that a grossly disproportionate influence was exerted on British policy by the Jews who had their reasons for hating National Socialist Germany. When in August, 1939, the final

crisis emerged I felt that the question of Danzig offered no just cause for a world war. As by reason of my opinions I was not conscientiously disposed to fight for Britain against Germany, I decided to leave the country since I did not wish to play the part of a conscientious objector, and since I supposed that in Germany I should have the opportunity to express and propagate views the expression of which would be forbidden in Britain during time of war. Realising, however, that at this critical juncture I had declined to serve Britain, I drew the logical conclusion that I should have no moral right to return to that country of my own free will and that it would be best to apply for German citizenship and make my permanent home in Germany. Nevertheless, it remained my undeviating purpose to attempt as best I could to bring about a reconciliation or at least an understanding between the two countries. After Russia and the United States had entered the war such an agreement appeared to me no less desirable than before for, although it seemed probable that with these powerful allies Britain would succeed in defeating Germany, I considered that the price which would ultimately have to be paid for this help would be far higher than the price involved in a settlement with Germany.

This belief was strengthened from month to month as the power of Russia grew, and during the later stages of the war I became certain that Britain, even though capable of gaining a military triumph over the Germans, would in that event be confronted with a situation far more dangerous and complicated than that which existed in August 1939; and thus until the very last moment I clung to my hope of an Anglo-German understanding, although I could see that the prospects thereof were small. I know that I have been denounced as a traitor and I resent the accusation as I conceive myself to have been guilty of no underhand or deceitful act against Britain, although I am also able to understand the resentment that my broadcasts have in many quarters aroused. Whatever opinion may be formed at the present time with regard to my conduct, I submit that the final judgment cannot be properly passed until it is seen whether Britain can win the peace. Finally I should like to stress the fact that in coming to Germany and in working for the German radio system my wife was powerfully influenced by me. She protests to the contrary but I am sure that, if I had not taken this step, she would not have taken it either. This statement has been read over to me, and it is true. (Signed) William Joyce." A. Yes.

Q. On the 1st June did you see the prisoner again? A. Yes.

Q. Did you there produce to him certain documents? A. Yes.

Q. Would you look first of all at this copy of a birth certificate? A. Yes.

Q. Is it headed: "New York. November 2nd, 1917?" A. Yes.

Q. "A Transcript from the Records of the Births reported to the Department of Health of The City of New York." Then, "State of New York. Certificate and Record of Birth. Name of Child: William Joyce. Sex: Male. Colour: White. Date of Birth: April 24th, 1906. Place of Birth: 1377 Herkimer Street. Father's Name: Michael Joyce. Father's Residence: 1377 Herkimer Street. Father's Birthplace: Ireland. Father's Age: 36 years. Father's Occupation: Contractor. Mother's Marriage Name: Gertrude Emily Joyce. Mother's Name before Marriage: Gertrude Emily Brooke. Mother's Residence: 1377 Herkimer Street. Mother's Birthplace: England. Mother's Age: 26 years." Then does it appear to be signed by "Charles F. Yerdon, Physician?" A. Yes, that is so; there is a typewritten name.

Q. Will you look at this letter in German headed "Berlin, 26th June, 1942," apparently addressed to William Joyce? A. Yes.

MR. HOWARD: My Lord, that will be translated. (*To the witness*) Now

will you look at this? Is it a contract, again written in German, between the German radio authorities and William Joyce? A. Yes.

Q. Will you look at this? Is it the document in German awarding the War Cross of the 1st Class to William Joyce? A. Yes.

Q. Now look at this. Is it a card, again in German, "*Deutscher Volkssturm*," apparently relating to William Joyce? A. Yes.

Q. And this. Is this a certificate in German? A. Yes.

Q. Now will you look at this? Is it another document in German? A. Yes.

Q. Headed "*Arbeitsbuch*"<sup>1</sup> on the front page? A. Yes.

MR. JUSTICE TUCKER: Did you produce this to him at the same time as the others were produced? A. Yes, sir.

MR. HOWARD: Looking at the first page of that document, does that bear the signature "William Joyce" upon it? A. Yes.

Q. You told my Lord and the jury that you had seen the prisoner write. Is that his signature? A. Yes, sir.

Q. Did you produce all these various documents that you have been referring to to the prisoner? A. Yes.

Q. Did you ascertain whether or not they were his property? A. Yes, sir. He said, "Yes, they are all my property."

Q. Look at these documents. (*To the Judge*) My Lord, this is for the purpose of identifying signatures. (*To the witness*) Those are the application and renewal forms for the passport. Do you see what purports to be on those documents the signature of William Joyce? A. Yes.

Q. Is that the signature of the prisoner? A. Yes.

Q. Now will you look at the *Wehrpass*? Does that bear upon it the signature of William Joyce? A. Yes, sir.

Q. Now will you look at the contract? At the end of the contract does there appear the signature of the prisoner? A. On page 3.

Q. You have already dealt with the Work Book. That bears the signature of the prisoner, does it? A. Yes.

Q. Is that right? A. Yes.

Q. Now will you look at these three documents? (*To the Judge*) My Lord, those are additional exhibits, (*To the witness*) The first one is a letter to the secretary of the Military Education Committee. Does that bear the signature of the prisoner, "William Joyce"? A. Yes.

Q. And is that another letter? A. Yes.

Q. And this is the enrolment form. Does that bear his signature? A. Yes, sir.

Q. This is a receipt for Certificate "A." Is that his signature? A. Yes.

Q. Here are two forms of contract for re-engagement in the Officers Training Corps. Do they bear his signature? A. Yes.

Q. Take the *Wehrpass* and the Work Book. Look first of all at the Work Book. Does that bear just under the heading of "Work Book" a number 40/A166525? A. Yes.

Q. Now will you look at the *Wehrpass*? Does that bear upon the front page of it, on the left-hand side under a heading, the same number 40/A166525? A. Yes.

*Cross-examined by MR. SLADE.*

Q. Captain Scarden, would you mind telling me when the birth certificate first came into your possession? A. Yes, sir; on the day before I put it to him.

<sup>1</sup> Work Book

- Q. You saw Joyce in the hospital at Lüneburg on the 31st May? A. That is so.
- Q. And you saw him again on the 1st June? A. Yes, sir.
- Q. May I take it that the birth certificate was in your possession on the 30th May? A. That is so.
- Q. Was that why you put the question to him about his nationality? A. No, sir, I did not examine the property at all as a matter of fact. It was in my possession, but I did not examine it.
- Q. You hadn't looked at the birth certificate at all? A. No, sir.
- Q. At any rate you did not find the birth certificate on him, did you? A. No, sir.
- Q. At the time that you were putting the question to him about his nationality, did he know that it was in your possession? A. I think he must have done, but I don't know.
- Q. If you don't know, on what grounds do you think he must have known? Did you tell him? A. No, sir. He knew he was in custody; he knew that his property was in custody, and I could only assume that he must have known that I had it.
- Q. It only in fact came into your possession for the first time on the morning of the previous day, didn't it? A. Yes.
- Q. You have been identifying various signatures of William Joyce? A. Yes.
- Q. If you look at the birth certificate, what that shows or purports to show is that he was born on 24th April, 1906? A. Yes.
- Q. Would you look at one of the exhibits of the year 1922—the one will do, for example, which is dated the 9th August, 1922, is it not? A. Yes.
- Q. If the date on the birth certificate is correct, on the 9th August, 1922, Joyce would have been sixteen years and four months old? A. Yes, sir.
- Q. When was the first occasion on which you saw him sign his name? A. On the 31st May.
- Q. The 31st May, 1945? A. 1945.
- Q. If the birth certificate is right, he would then have been almost exactly thirty-nine years old? A. Yes, that's right.
- Q. So that the disparity in years between those two signatures is roughly twenty-three years and you don't find any difficulty whatever in recognising the signature of a man of thirty-nine as being the same as that of a boy of sixteen? A. I find changes there, but I find similar characteristics.
- Q. I will put my question again. I don't challenge your veracity in the least. Please don't think that, Captain Scarden. You find changes, don't you? A. Yes.
- Q. In spite of those changes, may I take it that you find no difficulty in identifying the signature of a man of thirty-nine with the signature of a boy of sixteen. A. No, sir.

*(Adjourned for a short time.)*

SAMUEL LOPEZ SALZEDO, Sworn.

*Examined by MR. BYRNE.*

- Q. Is your name Samuel Lopez Salzedo? A. Yes.
- Q. Are you a translator and interpreter of foreign languages? A. Yes.
- Q. Have you translated a number of documents which are exhibits in this case? A. I have.
- Q. Will you be good enough first of all to look at the German passport in the name of Hansen? Have you translated that document? A. Yes.
- Q. Will you look at this? Is this your translation of it? A. Yes.
- Q. All these translations are correct, are they, Mr. Salzedo? A. They are.

- Q. Looking at your translation, does the document read in this way: on the cover does it say, "German State"? A. Yes.
- Q. And then on the first page, "German State Passport No. 281/44. Name of Holder: William Hansen." A. "Wilhelm Hansen."
- Q. "Accompanied by his wife." A. Yes.
- Q. "And by," and then there is a place left blank for children. A. Yes.
- Q. "Nationality: German." A. Yes.
- Q. On the second page is there a photograph? A. Yes.
- Q. A photograph of the prisoner apparently, looking at him? A. Yes.
- Q. So that apparently his name was "Wilhelm Hansen" for the purpose of this document. A. Yes.
- Q. Then is there a signature under the photograph? A. Yes.
- Q. "Wilhelm Hansen"? A. Yes.
- Q. "It is hereby certified that the holder is the person appearing in the above photograph and has signed in his own hand the signature appearing below. Hamburg. November 3rd, 1944. Chief of Police," and then there is a signature, is there? A. Yes.
- Q. Does the third page read in this way, "Personal description. Calling: Teacher. Birthplace: Galway, Ireland. Date of birth: March 11th, 1906. Residence: Hamburg. Build: Medium. Face: Oval. Colour of eyes: Blue-grey. Colour of hair: Dark blond. Particular identification marks: Scar, right cheek"? A. Yes.
- Q. Now will you look at your translation of the *Wehrpass*? On the cover does it read, "Military passport"? A. Yes.
- Q. On page 1, "Military Number: Berlin," and then there is a number, "Name of holder: William Joyce. Number of Identity Card." Is there any number given? A. No, that is left blank.
- Q. "Number of Work Book [40 A166525] 27" and then an "i"? A. Yes.
- Q. "Number of identification marks (in war)"—is that left blank? A. That is left blank.
- Q. Then there is some address, "Berlin W.15." A. Yes.
- Q. "Stamp of Military District"? A. Yes.
- Q. And then a signature purporting to be that of the Military District Commander. Is that right? A. Yes.
- Q. On page 2 is there the stamp of the Military District and a photograph of the prisoner? A. Yes.
- Q. And the signature, "William Joyce"? A. Yes, described as "Actual signature of holder."
- Q. Yes. Then on pages 3 and 4, "Personal particulars. Surname: Joyce. Christian name: William. Birth: 24th April, 1906. Birthplace: New York, U.S.A. Nationality: German, formerly English. Religion: Believer. Family status: Married." A. Yes.
- Q. "Profession according to professional register" and then in brackets "(Studied) Talks and literature." Is that right? A. Yes, that is right.
- Q. And then in brackets the word "(Exercised)" and then "Speaker on the Reich Radio." Is that right? A. Yes.
- Q. "Parents. Father: Michael Joyce, Architect. Mother: Gertrude Joyce. Maiden name: Brooke. Education: University. Knowledge of foreign languages: English, perfect English-German. Professional, technical or sporting qualifications: Swimming, riding and boxing." A. Yes.
- Q. Page 5, "Registration: Registered as liable to military service. Military District Headquarters, Berlin X, 12th February, 1941." A. Yes.
- Q. "Decision: Category K.V. Army Service position 1st Reserve 1." Is that right? A. Yes.
- Q. Then there is the signature of a military district commander? A. Yes.
- Q. Now look at this document, will you, and your translation of it? Does

- the document read in this way: "German European radio transmitter, Head Broadcasting Station, Luxemburg. Payment Order"? A. Yes.
- Q. "Cashbook" with a number and date, and "Date of letter of instructions, 10th February, 1944"? A. Yes.
- Q. "Pay Office is instructed," and then "To Mr. William Joyce, Luxemburg, Hotel Alfa," and then "Account No." and then there are certain numbers shown, "Usual residence Berlin Charl"—would that be "Charlottenburg"? A. Yes.
- Q. "Kastanienallee, 29," Then, "Sound record to pay following fee." Then it says, "Day of week, date, time," and then does it give 16.10, apparently the 16th October? A. Yes.
- Q. 9.12, 15.12 and then 22.1 and 22.30? A. Yes.
- Q. Apparently the hours? A. Yes.
- Q. "Title of broadcast: Views on the News. English propaganda. Talks, manuscript and talks at 50. Remuneration, 200." A. Yes.
- Q. "Collaboration in the broadcasting or recording took place," and then, "Above amount acknowledged to have been received, Luxemburg, 11th February, 1944," and there is a signature "William Joyce." "Receipt only to be made out on receipt of the account at the pay office subject to approval of the Berlin directorate," and then "Reich-Rundfunk G.m.b.H. Luxemburg Station, German Europe Broadcasting Studio. Principal Station, Luxemburg." A. Yes.
- Q. Is it a receipt for 200 marks? A. Yes.
- Q. Now will you look at this document and your translation of it? Does it read in this way: "Foreign Director, Dr. Winkelnkemper, Berlin, 26th June, 1942. To Mr. William Joyce. I hereby appoint you with effect as from the 1.7 of this year as chief commentator for the group of countries 'England.' This is an instruction to you to prepare the political comments in the English language for our news service in accordance with the directions of the superior authorities and suggestions by the director of the group of countries. I also ask you to examine the news services from the language point of view and to allocate the announcers in concert with the editorial chief who is on duty. In order that you may obtain the necessary time for your further extended duties you are released from the news announcement service. Having regard to your extended responsibility and your many years of efficiency as an announcer and commentator, I am considering a readjustment of your remuneration. You will hear further on this matter shortly," and then is there a signature "(Signed) Winkelnkemper"? A. Yes.
- Q. Now will you look at this contract and your translation. (*To the Judge*) My Lord, it is not probably necessary to read all of this, but I will if my learned friend desires me to. But there are one or two clauses I would draw attention to. (*To the witness*) Does that read, "Contract between the Reichs-Rundfunk G.m.b.H. Berlin-Charlottenburg. Mr. William Joyce?" A. Yes.
- Q. Then, in brackets, "(Wilhelm Fröhlich) of Berlin. The following contract is concluded." Then Clause 1: "Mr. William Joyce is appointed Head Commentator in the English editorial department of German broadcasting stations for Europe. His work will be arranged according to the plan of distribution of business prepared by the Foreign Directorate. In other respects the mutual rights and obligations are determined by the provisions below of this contract. The regulations as to remuneration of the Reichs-Rundfunk G.m.b.H. will not apply save in so far as they are hereinafter expressly referred to. Clause 2: Mr. William Joyce will receive a gross monthly salary of 1,200 Reichsmarks (one thousand two hundred Reichsmarks) payable in advance on the 1st of each month. This salary covers



all claims of Mr. William Joyce against the Reichs-Rundfunk G.m.b.H. in respect of his work on behalf of the latter unless shift or Sunday extra work is done for service reasons. In addition to the salary children's allowances will be granted to the same amount and on the same conditions as in the case of the remaining members of the permanent staff of the Reichs-Rundfunk G.m.b.H. The Reichs-Rundfunk G.m.b.H. will during the currency of the contract grant an additional allowance for maintenance of 4½ per cent of the monthly salary including the children's allowance in accordance with Section 1 of the appended annexe to the service contract. At Christmas Mr. William Joyce will receive a special bonus under Clause 10 of the remuneration regulations of the Reichs-Rundfunk G.m.b.H." Then Clause 7 reads, "Mr. William Joyce is bound to place the whole of his work at the disposal of the company." And Clause 8, "The carrying on of any accessory occupation by Mr. William Joyce is only permissible with the express consent of the directorate. He has no right to enter into obligations of an exclusive character towards firms producing gramophone records." And Clause 10 reads: "This contract comes into force on and from July 1st, 1942. The period of notice of termination is three months, to end at the close of a calendar quarter. Berlin-Charlottenburg, July 3rd, 1942. Reichs-Rundfunk G.m.b.H." And then there is a signature. Is that right? A. Yes.

- Q. And after that there is the signature of "W. Joyce"? A. Yes, first a German signature, and then Mr. Joyce's signature.
- Q. Now will you look at this? It is the award of the Cross of Merit in War, and your translation. Does that read, "In the name of the German People I award to the Chief Commentator William Joyce of Berlin-Charlottenburg the Cross of War-Merit of the First Class. Führer's Headquarters, 1st September, 1944, The Führer," and are there two signatures "A. Hitler" and "Meissner"? A. Yes.
- Q. Now will you look at this document and your translation? It is a *Volkssturm* card, is it? A. Yes.
- Q. "German Volkssturm, Gau"—is that Berlin? A. Yes.
- Q. "Name: Joyce. Christian name: William. Born on 24.4.1906 in New York. Residing at 29"—what has that got after it? A. "Kastanienallee, Berlin-Charlottenburg."
- Q. "Is a member of the German Volkssturm. German Volkssturm, Berlin District, V Battalion, Wilhelmplatz I." Is that dated, "Berlin, 21st December, 1944"? A. Yes.
- Q. And signed by somebody—does it look like G. Knispel? A. Yes.
- Q. "Local Group Chief." A. Yes.
- Q. Now look at this document. Does it read "Reichs-Rundfunk-Gesellschaft (Broadcasting Company for the Realm)"? Is that the transmitting company for the realm? A. Yes.
- Q. "The German transmitting stations for Europe Board of Management Reichs-Rundfunk G.m.b.H. (1) Berlin-Charlottenburg 9, Masurenallee. Certificate to be produced at the booking office. (1) Berlin-Charlottenburg 9, Masurenallee 8-14. 29.3.1945. We hereby certify on behalf of Mr. and Mrs. William Joyce, collaborators in the English editorial department of the German transmitters for Europe, that they have temporarily been transferred to the transmitting station of Eupen. As it may be necessary for service reasons for Mr. and Mrs. Joyce to have to return to Berlin at any time, we request that a corresponding re-notification of journey be handed them." Is that signed by somebody called "Hopp"? A. Yes.
- Q. Signing apparently for the "Reichs-Rundfunk G.m.b.H.," the German transmitters for Europe? A. Yes.

- Q. Now this document and your translation. On the cover does it read "German State Work Book"? A. Yes.
- Q. And then on page 1, "Work Book (Law of 26th February, 1935, State Gazette, page 311)"? A. Yes.
- Q. And then "No. 40/A166525," which as we know corresponds with the number of the *Wehrpass*. "Name: William Joyce," and then, "Actual signature of holder," and there is the signature, "W. Joyce"? A. Yes.
- Q. Now, page 2. "Date of birth: 24th April, 1906. Birthplace: Galway. District: Ireland. Nationality: Great Britain." A. Yes.
- Q. "Family status: Married. Place of residence and address: Berlin, Friedrichstrasse 30; Berlin-Charlottenburg"—how do you pronounce the next word, Mr. Salzedo? A. Steifensandstrasse 4.
- Q. And then the next one, "Berlin-Charlottenburg"? A. Kastanienallee 29.
- Q. Then on page 3, "Vocational training. School training: Honours, London University, 1923-1932." A. Yes.
- Q. "Special qualifications (e.g., driver's licence for motor vehicles)," and the special qualification seems to be "English"? A. Yes.
- Q. Then on page 4, which has the heading "Only to be filled in by Labour Office. Previous occupations of long duration: 1, Lecturer, Victoria Tutorial College, London, England, from 13.9.26 to 16.4.33. 2, Director of Propaganda and deputy leader, British Union of Fascists, National Socialists, London, England, 16.4.33-11.3.37. 3, Leader, British National Socialist Party, London, England, 2.4.37-27.8.39. 4, Editor and speaker, German Radio Company, Berlin-Charlottenburg, 19.9.39," and then there is a blank for the column headed "To," meaning how long it has gone on for, in other words—that is left blank? A. Yes.
- Q. On page 5, "Occupational Group: 27. Class of occupation: i. Issued on 4th October, 1939." And there is the stamp of the Labour Office and a signature. Is that right? A. Yes, quite correct.
- Q. On pages 6 and 7, "Entry by employers. Name and place of concern: German Radio Company, Berlin-Charlottenburg 9, Masurenallee 8-14. Date of beginning of employment: 18th September, 1939. Nature of employment: Announcer of English news. Reichs-Rundfunk G.m.b.H. Berlin-Charlottenburg." Then "No. 2 German Radio Company" is the "Name and Place of Concern." "Berlin-Charlottenburg. Nature of business: German Broadcasts for Europe. Date of beginning of employment: 1st July, 1942. Nature of employment: Head commentator in English section." Is that right? A. Quite correct.
- MR. SLADE: I have no questions.

FRANK BRIDGES, *Sworn*.

*Examined by MR. HOWARD.*

- Q. Are you Frank Bridges, Chief Inspector, New Scotland Yard? A. Yes.
- Q. At twenty minutes past four on the afternoon of Saturday, the 16th June of this year, did you see the prisoner? A. I did, sir.
- Q. After he had arrived in this country under military escort? A. That is so.
- Q. What did you say to him? A. I said that I was a police officer, that I was going to arrest him and take him to Bow Street where he would be charged with high treason. I cautioned him and he said, "Yes, thank you."
- Q. Later that day was he charged? A. He was, sir.
- Q. What with? A. He was charged with treason under the Treason Act, 1351.
- Q. Was the charge read over to him? A. It was, sir, and he was cautioned,

and he replied, "I have heard and taken cognisance. To-day I shall not add anything to the statement I have made to the military authorities."

MR. SLADE: No questions.

THE ATTORNEY-GENERAL: My Lord, that is the case for the Crown.

## DEFENCE

MR. SLADE: My Lord, I submit to your Lordship as a matter of law that there is no case to go to the jury upon any of the three counts, the subject-matter of this indictment.

The three counts are all alike in two respects: each of them in the statement of the offence alleges that William Joyce was then, that is to say, at the material date, a person owing allegiance to our Lord the King. Upon the face of the indictment there is nothing to distinguish between counts 1 and 2, and indeed, until I heard my friend the Attorney-General upon the case on the third count, I had not appreciated there was any distinction between them, except that the lesser count 3 was included in the greater which is count 1 in period of time. But, as he has now been good enough to tell me what his case is on that point, I will deal with that separately. I gather no one disputes now that as to both these counts 1 and 2 the Prosecution must establish—of course, it is sufficient at the present moment that they should show merely a *prima facie* case—that William Joyce is a British subject; because if he is an alien, apart from count 3 he can only owe allegiance to His Majesty the King so long as he is within the King's dominions, and in this case it is alleged that the acts complained of were done outside His Majesty's dominions, namely, in the German realm.

The third count, as now explained by my learned friend the Attorney-General, says, as I understand it, this: Notwithstanding that to-day you are not a British subject, if the Prosecution fail to prove that you are, notwithstanding the fact that the offences are alleged to have taken place outside His Majesty's dominions, you nevertheless, being an alien—assuming that against the Prosecution for this purpose—and being outside the King's dominions, owe allegiance to His Majesty the King because you have by what must *ex hypothesi* be false statements obtained possession of British passport. That, of course, is a pure question of law.

With regard to counts 1 and 2 I am now submitting to your Lordship that there is not even *prima facie* evidence to go to the jury that William Joyce is or ever has been a British subject. Nationality is a question of status: it is not a question of contract or mere position; it is a question of status, and status must be in every case a question of mixed fact and law so far as this country's nationality is concerned, it being of course a question of English law. My submission to your Lordship really comes to this, that, if I am a Chinese, by screaming from the housetops fifty thousand times that I am a British subject I do not become one; secondly, by making fifty thousand declarations that I am a British subject I do not become one; thirdly, by swearing on oath that I am a British subject or by a statutory declaration I do not become one. And it makes no difference whether I make those statements because I honestly believe them to be true or whether I make them for some ulterior motive of obtaining a British passport. I cannot alter my status nor can I create a status by anything which I can do. In other words, it takes two people at least to make status: the person who is the subject, and the Crown in this country who by Act of Parliament or otherwise at common law confers that status upon persons.

May I take one illustration to show your Lordship what I am submitting

and can I preface it with this remark? When a person says that he was born in London on the 14th October, 1891, that is and must be pure hearsay because he cannot possibly say when he was born or where he was born. He is only repeating what someone else has told him. I will take a stronger case than that against myself. Supposing a man were charged with bigamy, marriage of course being a question of status, and the prosecution, having proved the second ceremony of marriage, put a witness into the box who said, "I was present at the wedding breakfast and, as the bridegroom was about to cut the cake, I heard him turn to his bride and say, 'I think I might just as well tell you now that I am married already and my wife is still living.'" A witness having been put into the witness box to testify to that statement being made by the bridegroom, in my respectful submission that would be no evidence whatever, not even *prima facie* evidence, that the prisoner was married, that he enjoyed the status of a married man, and that his wife was still living at the time of the second ceremony of marriage.

My Lord, I do not wish to worry your Lordship with a long submission and a large number of authorities in support of it, if it has to be done twice over; and I only want to adopt the practice which is more convenient to the court. So far as the first submission is concerned, certainly at some stage of this trial I shall have to trouble your Lordship with a reference to the authorities: firstly, as to what constitutes a British subject and, secondly, as to the duration of what my friend the Attorney-General has rightly called local as opposed to natural allegiance. That question, of course, must arise on the third count. So far as that count is concerned, I respectfully submit it can only be a pure question of law as to which there can be no question at all for the jury. Putting it in its baldest possible form, it means this, that a person not being a British subject, that is to say, an alien, can in certain circumstances owe allegiance to His Majesty the King while he is outside His Majesty's dominions. In my respectful submission there is no authority for that statement of the law anywhere. If there is, I have not been able to find it, except one reference to a passage which I may have to deal with in due course, in *Foster's Crown Law* in 1809.

One other word before I ask your Lordship which is the more convenient course for me to adopt, because at some time or other I should like to have the advantage of hearing the Attorney-General's legal arguments so as to have an opportunity of replying to them. It may be that your Lordship may think that this is the convenient stage to do it. Quite apart from my submission I admit, of course, that the Crown only has to show a *prima facie* case that William Joyce is a British subject, and the statements which Joyce has made I have summarised.

Put shortly, my four points are these: firstly, that status is a question of mixed fact and law; secondly, that admissions are pure hearsay, so-called admissions; thirdly, as I shall show your Lordship in a moment, they are themselves contradictory, although I appreciate that that would not mean that there was not some evidence, if I am wrong, I mean, on the second point; and, fourthly—which is more of a comment—that, if William Joyce was in fact born in Ireland, nothing would have been simpler than for some witness for the Prosecution to have produced his birth certificate, because there are Acts in force with regard to the registration of births in Ireland just as there are in England and Wales under the 1837 Act. I therefore submit to your Lordship on those grounds that so far, as counts 1 and 2 are concerned, the admissions which have been made—I will just summarise them—are not *prima facie* evidence of what is a mixed question of fact and law, namely, the status of William Joyce. I hope I have got them accurately. Summarising the various statements with the dates, there are

the declaration to obtain a passport, dated the 4th July, 1933—"May I give them to your Lordship very shortly?"—"British subject by birth, born in Galway 24th April, 1906." "British subject by birth"—that is dated the 24th September, 1938, and it was the first application for renewal. Again "British subject by birth," second application for renewal, dated 24th August, 1939. Then, dated the 3rd of November, 1944, in the German passport, page 3, the birthplace is stated to be Galway, Ireland, and the date of birth, 11th March, 1906. On the 12th April, 1941, the birthplace is stated to be New York, U.S.A., and the nationality German, formerly English. Then the prisoner's statement, made on the 31st of May, 1945, "born in Brooklyn, U.S.A., 24th April, 1906;" and the birth certificate which was issued on the 2nd November, 1917; I will not trouble your Lordship with the full details of that. It gives the date of the birth as the 24th April, 1906, the place of the birth as 1377 Herkimer Street, and the father's birthplace as Ireland. On the 21st December, 1944, there is a Volkssturm card, and the statement is that the prisoner was born in New York on the 24th April, 1906. In the German Work Book, which was issued on the 4th of October, 1939, the date of birth is given as the 24th April, 1906, the birthplace as Galway, the district as Ireland and the nationality as Great Britain.

MR. JUSTICE TUCKER: What was the date when that was issued?

MR. SLADE: That one was issued on the 4th October, 1939. That is the German Work Book. My Lord, in the additional evidence the first one is the letter of the 9th August, 1922, the one produced by Miss Isaac this morning, in which he says, "I was born in America but of British parents." In the contract of enrolment, the statement made by the prisoner was that the place of birth was New York and the date the 24th April, 1906. Of course, the fact that they are contradictory, I respectfully agree, does not mean that at this stage of the case there would not be evidence either way, if a man can affect his status or give evidence of his status by making admissions; and I base my submission on counts 1 and 2 purely upon the fact that admissions by a man or a declaration by a man, no matter how often repeated, is no evidence at all, not even *prima facie* evidence, of status.

If your Lordship is against me on that submission, then I feel it would be perhaps wrong now to go on to my submission upon the third count, which is purely a question of law, if it means arguing it twice; and I would like your Lordship to be good enough to indicate which would be the better stage to go into this pure question of law. If, of course, I am right in my submission in regard to counts 1 and 2, those counts, however, become a pure question of law, because, assuming everything against myself for the purpose of my submission, I should still be submitting to your Lordship that as a matter of law Mr. Joyce could not owe any allegiance to His Majesty the King whether he obtained one or fifty passports by false pretences, assuming that they were obtained by false pretences.

MR. JUSTICE TUCKER: Count 3, of course, although it is relied upon, put in the alternative way—if there is some evidence that the prisoner was a British subject, that would support count 3 as well.

MR. SLADE: Certainly, my Lord.

MR. JUSTICE TUCKER: That being so, I think it would be convenient at this stage to deal with that aspect of the matter, and then in certain events you might be able to renew your submission on the alternative basis of count 3.

MR. SLADE: I am obliged to your Lordship, and if that is equally convenient to the court I would prefer it for this reason. My learned friend the Attorney-General has been good enough to promise me a list of his cases. I have given him a list of mine and I have sent it up to the court

so that your Lordship might have the volumes before you. I do not know the books at the moment on which my learned friend is going to rely. I am not making the slightest complaint, I have had the greatest possible assistance, but in fact they have not reached me. I shall have time to look at them and that will give me an opportunity of replying to my friend's legal argument afterwards.

My Lord, the first question that I desire to argue involves the question of what is a British subject. Now, my Lord, unfortunately that involves a consideration of not merely who is a British subject now in 1945, but what the law was in 1906. For the purpose of my argument the only fact I want your Lordship to assume, if indeed it requires any assumption, is that the birth certificate which has been put in by the prosecution accurately states the date of the prisoner's birth as the 24th April, 1906. My Lord, the law, your Lordship will see, involves an investigation of three things: (1) where was the prisoner born? (2) what was his father's nationality at the time of his birth? and (3) what was the father's nationality at such time as the prisoner came of age, which would be on the 23rd April, 1927? My Lord, to show your Lordship that the law which obtains now is not necessarily the law which obtained in 1906—

MR. JUSTICE TUCKER: I am not quite clear what you are doing, Mr. Slade. Are you amplifying your submission that there is no evidence on the basis of admissions made by the prisoner?

MR. SLADE: Yes, my Lord. I understood your Lordship to say that I should deal with the question of a British subject.

MR. JUSTICE TUCKER: Yes, as to whether there is evidence at the present stage at all which would be sufficient to leave to the jury as some evidence of British nationality.

MR. SLADE: In other words, may I put it in this way? These are declarations or admissions made by the prisoner. I am now submitting to your Lordship that they are questions of mixed fact and law. In order to have the slightest weight one would have to assume that Mr. Joyce, at the time the admissions were made, had some knowledge of what the law was at that time; otherwise, of course, his admissions would not be worth the paper on which they were written. For example, let us take a fantastic case. Supposing that he was born in this country, and it is assumed that because he was born in this country—that would be a very natural assumption—he was a British subject. Of course, there are cases where a person who is born in this country may have been a British subject at one time, assuming he was an infant, and ceased to be a British subject when his father became naturalised [elsewhere]. But I am hoping that I can assist your Lordship in coming to a conclusion on the question of being a British subject, because it is difficult to explain my submission to your Lordship without knowing what the law was. It is now laid down by the *British Nationality and Status of Aliens Act*, 1914, which has been amended by various subsequent Acts, but not in any form material to this case. The Act, as amended by the Acts of 1918 and 1922, is set out in *Halsbury's Statutes*,<sup>1</sup> volume 1, page 185.

I do not think that the statute I am reading from now has been amended so as to cover the slight variations of 1918 and 1922. I do not think there is any difference on the point, but if your Lordship would look at Section 1 (3) your Lordship will see these words: "*Nothing in this section shall, except as otherwise expressly provided, effect the status of any person born before the commencement of this Act.*" I think the words "except as otherwise expressly provided" must refer back to the words which your Lordship

<sup>1</sup>*The Complete Statutes of England, Classified and Annotated* (Butterworth, 1929).

will see immediately following the small letter (c): "*Provided that the child of a British subject, whether that child was born before or after the passing of this Act,*" etc. That is the only passage in Section 1 where I can see that anything making the Act retrospective appears expressly. As your Lordship sees, if this Act did apply, Section 1 (1) reads in this way: "*The following persons shall be deemed to be natural-born British subjects, namely: (a) Any person born within His Majesty's dominions and allegiance, and (b) Any person born of His Majesty's dominions whose father was a British subject at the time of that person's birth, and who fulfils any of the following conditions . . .*"

Now, if your Lordship would be good enough to look at Section 12 (1); that says: "*Where a person being a British subject ceases to be a British subject, whether by declaration of alienage or otherwise,*" which of course would include naturalisation, "*every child of that person, being a minor, shall thereupon cease to be a British subject, unless such child, on that person ceasing to be a British subject, does not become by the law of any other country naturalised in that country,*" and the proviso is immaterial. There is nothing to show that Section 12 does not come into operation as regards everyone the moment the Act came into operation, which was on the 1st of January, 1915. There is no corresponding proviso to subsection 3 of Section 1, but I will tell your Lordship what the corresponding law was before this Act came into force with regard to that.

Lastly, Section 13, and this is very important, says: "*A British subject who, when in any foreign state and not under disability, by obtaining a certificate of naturalisation or by any other voluntary and formal act, becomes naturalised therein, shall thenceforth be deemed to have ceased to be a British subject.*" Disability is defined in Section 27 as meaning the status of being a married woman or a minor, lunatic or idiot. Upon the assumption that none of those sections applies to the case of William Joyce, because he was born before the 1st January, 1915, the law dealing with this point is very conveniently set out in the first edition of *Halsbury's Laws of England* which happens to have been published in 1907. Has your Lordship a copy of the first edition of *Halsbury*?<sup>1</sup>

MR. JUSTICE TUCKER: No, you read it and I will follow it. I don't want to stop you, Mr. Slade, but I am finding it a little difficult to follow because at the present moment there is no evidence as to when this man was born.

MR. SLADE: The birth certificate, my Lord.

MR. JUSTICE TUCKER: That is no evidence yet. It is a birth certificate. It only becomes evidence when there is some evidence of the identity of the person referred to in the certificate with the person described in the certificate. At the present moment I merely know that there is a document in existence which purports to show that somebody was born on a certain day.

MR. SLADE: My Lord, in my respectful submission that has been put in as having been acknowledged by William Joyce to be his property and is quite clearly referring to his own birth certificate.

MR. JUSTICE TUCKER: Very well.

MR. SLADE: My Lord, if it did not refer to that it would have been wholly irrelevant.

MR. JUSTICE TUCKER: I have expressed my view as to the legal effect of this document. It was put in without objection as part of the general material in the case as a document which he acknowledged as being in his possession together with a number of other documents. At the present moment in my view there is no evidence to prove when this man was born—at the present

<sup>1</sup>*Halsbury's Laws of England* (Butterworth) first edition 1907, second edition 1931.

stage. I quite follow your submission with regard to whether or not a man can make an admission as to his status. That seems to be quite another matter. I find it a little difficult to follow how at the present stage an investigation as to the precise law of nationality in 1906 or at any other date is material.

MR. SLADE: Of course, I quite understand your Lordship finding it difficult, because I am afraid the point which your Lordship has just put to me, and which of course I accept, has never occurred to me, namely, that it was going to be suggested that by putting in that birth certificate which was acknowledged—the prosecution put it in—and I think it is a document moreover which purports to be certified as being a true copy. Of course, I can quite see your Lordship's point. Your Lordship means it merely *purports* to be a birth certificate of a person of the name of William Joyce. May I respectfully say this? Accepting what your Lordship says, I find it difficult at the moment to see how that can be in a sense otherwise than in my favour, because, if there is no evidence at all of where this man was born—none of any description whatsoever except his own statements which are contradictory—then can I not, for the purposes of my submission that it cannot affect his status, argue firstly that, to say that he was a British subject, the admission would have to go to the extent of saying that he was either born within the King's allegiance or was born outside the King's allegiance of a British father at the time of his birth? And, as there is no evidence at all that he was born, in the absence of this birth certificate, inside His Majesty's allegiance, except of course the man's own statements which I am submitting are not evidence at all—

MR. JUSTICE TUCKER: You are saying there must be an admission at any rate that he was what?

MR. SLADE: I say that, in order to raise a *prima facie* case that Joyce was a British subject, the prosecution must show a *prima facie* case that he was born in this country or a *prima facie* case that his father was a British subject at the time of his birth. My learned friend Mr. Curtis-Bennett has been good enough to remind me that the Statement of William Joyce has been put in by the Prosecution, and the first line of that says, "I was born in Brooklyn, U.S.A., on the 24th April, 1906." My Lord, I should have respectfully submitted to your Lordship that that statement, having been put in, is some evidence that he was born on that date, and I am also reminded that there is another document which refers to the maiden surname of his mother, Miss Brooke, which also appears upon the birth certificate as the mother's name before marriage, Gertrude Emily Brooke. But, taking that against myself—

MR. JUSTICE TUCKER: Your submission really covers all that, does it not?

MR. SLADE: Yes.

MR. JUSTICE TUCKER: You say a man cannot admit what his status is and that any admission he makes must be in the nature of hearsay; and, with regard to your submission that the Prosecution must prove either that the man was born in Britain or that his father was a British subject at the time of his birth, if your submission is correct, you would say that he could not give first-hand evidence of either, because he would not know anything about it at the time he was born?

MR. SLADE: Precisely.

MR. JUSTICE TUCKER: That seems to me to cover everything, if it is right.

MR. SLADE: Your Lordship, of course, is quite right. I am afraid I was only referring to the authorities—of course, your Lordship would know them—because, without referring to the authorities, it does appear that those are the two requirements of British nationality or one of them is. I was taking the law as it is now and the law, slightly different as it was before



the 1914 Act was passed, for the purpose of showing that by either law a pre-requisite of British nationality, assuming that the prisoner was born out of this country or out of His Majesty's dominions, was that the father should be at the time of his birth a British subject. Therefore I would not argue—it is perfectly true that the prisoner has stated so—there are documents like the birth certificate. Putting it against myself for the moment, the birth certificate gives the father's birthplace as Ireland. If the son can only speak to his own birthplace by hearsay, *a fortiori* he can only speak to his father's birthplace by hearsay.

My concluding remarks on my submission are these: Whenever one wants to prove any form of status—if you want to prove that a man is an undischarged bankrupt, if it is a bankruptcy offence, it is not sufficient to take a statement by the man that he was made bankrupt and that he is still undischarged; he has to produce the record from the Bankruptcy Court to show when the Receiving Order and the Adjudicating Order were made. There can be no stronger evidence against a man on a question of pure fact than his own admission, and in my respectful submission, where it is not a question of fact but a question of applying the correct law to the facts in a criminal case, it is not even *prima facie* evidence.

MR. JUSTICE TUCKER: Yes, Mr. Attorney?

THE ATTORNEY-GENERAL: My Lord, in my submission status is a question of law dependent upon certain facts. The facts are birth in a particular locality or birth of parents of a particular nationality. Both those matters, birth and parentage, are matters of fact provable, in my submission, in any way appropriate to the proof of any other matter of fact. Not every birth can be proved by the production of a birth certificate or by the evidence of somebody who happened to be present at the time; but, if my learned friend's submission were right, it would mean that no person could ever give evidence of his own nationality. I do not think it is necessary for me to go so far as to say that all, but certainly most, matters of fact are capable of proof either by affirmative evidence or by admission, and an admission to be binding on the person who makes it does not have to relate to something which is within that person's personal knowledge: it is equally a binding admission if it is based upon information which that person has been given and which information he is content to accept. My Lord, so far as they go every document in this case—whatever their evidential value may be—with the exception of the prisoner's own Statement, tends to show facts in relation to birth and parentage which, if uncontradicted, would lead to a conclusion of British nationality.

My Lord, if the matter were left at this stage as a question of fact, the jury might well say or a tribunal of fact might well say, in assessing the relative importance which they would attach to the prisoner's Statement made after he had been apprehended and at a time when he had been warned that he might be prosecuted, that this was not a document to which they were prepared to attach so much weight as to the letter to the officer commanding the O.T.C. or to the three declarations made in the application for a British passport or to the letter sent to the O.T.C. authorities by the prisoner's father. My Lord, that letter—not one which it would have been open to me to put in as evidence in this case, and to which I was careful not to refer—has been, if I may say so, very properly put in by my learned friend and now, in my submission, it becomes an important piece of evidence in this case. True, my learned friend made some comment on it to the witness. He suggested it was an equivocal answer to the question which had been put in the letter from the O.T.C. authorities, "Were you ever naturalised?" But the witness said—and a tribunal of fact might regard the answer as a very good one—that he thought the letter was a complete

## ***Fellow-Countrymen!***

We of the British Free Corps are fighting for YOU!  
We are fighting with the best of Europe's youth to preserve our European civilisation and our common cultural heritage from the menace of Jewish Communism.

**MAKE NO MISTAKE ABOUT IT!** Europe includes England. Should Soviet Russia ever overcome Germany and the other European countries fighting with her, nothing on this earth would save the Continent from Communism, and our own country would inevitably sooner or later succumb.

We are British. We love England and all it stands for. Most of us have fought on the battlefields of France, of Lybia, Greece, or Italy, and many of our best comrades in arms are lying there—sacrificed in this war of Jewish revenge. We felt then we were being lied to and betrayed. Now we know it for certain.

This conflict between England and Germany is racial SUICIDE. We must UNITE and take up arms against the common enemy. We ask you to join with us in our struggle. We ask you to come into our ranks and fight shoulder to shoulder with us for Europe and for England.

Published by the British Free Corps.

JOHN AMERY ARRESTED IN MILAN



answer to the question, inasmuch as it stated that neither of them were American citizens and that they were British.

My Lord, even if one looked at the birth certificate for what it is worth, it would in my submission be evidence, if it is evidence of anything, of British nationality. True, it records the birth in America, but it records the father's birthplace as being Ireland. I ask your Lordship to say that, if the matter rests here, the documents are really all one way; that my learned friend cannot reprobate the seven documents which go to suggest British nationality and probate the one document, the prisoner's Statement, which appears to suggest American nationality. But, taking the document as a whole and bearing in mind the context of passport application, the Statement and all the rest of the documents, the evidence as to the fact would lead to a conclusion of British nationality. I am not at all sure that my learned friend put the onus right in this matter.

In the first volume of *East's Pleas of the Crown* there is a passage at page 51 referring to a case of Aeneas Macdonald, which was a treason case tried in 1747, and the passage I would rely on is this. Lord Chief Justice Lee, in directing the jury, told them that as to the question whether or not the prisoner was a native of Great Britain the presumption in all such cases was against the prisoner, and that where he put his defence on that issue the proof of his birth out of the King's dominions lay upon him. The matter is dealt with in *Roscoe's Criminal Evidence*—I have the 15th edition—at page 1099. There under the heading "Proof of being a subject," it is said: "Apparently slight prima facie evidence is sufficient if uncontradicted. In 1571 Story admitted the allegation that he was born English but objected that for seven years he had been in the service of the King of Spain, but the court refused to accept the plea. 'If he spoke English,' said Lord Chief Justice Holt in Vaughan, 'that is some evidence he is an Englishman (i.e. a subject),' where there was evidence that defendant had admitted that he was an Irishman. The question is clearly for the jury." Then, my Lord, it goes on to discuss that case, but in my submission the authorities here are all one way. If indeed there is any onus on the Crown at all, it is one which is lightly discharged; and here, on the evidence from the documents form the declaration, from the father's own letter showing that his attention was specifically directed to that point, my submission is that the tribunal must find the fact as to birth and parentage which would enable your Lordship to rule that this man was a British subject if those facts remained uncontradicted.

MR. JUSTICE TUCKER: Do you wish to add anything on this point, Mr. Slade?

MR. SLADE: No, my Lord. I have looked up the case of Aeneas Macdonald which is also reported in *Foster's Crown Cases*. That was the case where Lord Chief Justice Lee said in substance that in cases of treason everything was assumed against the prisoner and Sir Michael Foster made a similar statement, your Lordship will remember, with regard to the onus of proof in cases of murder—which was disapproved by the House of Lords in *Woolmington's case*.<sup>1</sup>

MR. JUSTICE TUCKER: What is the passage in *Foster* to which you are referring?

MR. SLADE: I was saying there was a passage in the case of Aeneas Macdonald which is reported in *Foster's Crown Cases*. Of course, it was not a State trial.

THE ATTORNEY-GENERAL: It is reported in 18 *State Trials*.

MR. SLADE: The case is also reported in *Foster's Crown Cases*.

MR. JUSTICE TUCKER: What is the case called?

<sup>1</sup>*Woolmington v. Director of Public Prosecutions*, 1935, vol. 25, Court of Criminal Appeal reports.

MR. SLADE: "Aeneas Macdonald."

MR. JUSTICE TUCKER: It is at page 59 of *Foster's Crown Cases*.

MR. SLADE: I am obliged to your Lordship. The passage is on page 59: "*The counsel for the prisoner insisted that he was born in the dominions of the French King and on this point they put his defence. But apprehending that the weight of the evidence might be against them, as indeed it was, with regard to the place of the prisoner's birth, they endeavoured to captivate the jury and the bystanders by representing the great hardship of a prosecution of this kind*"—that is not the passage.

MR. JUSTICE TUCKER: It is at the bottom of page 60 in *Foster's Crown Cases*.

MR. SLADE: I am obliged to your Lordship. "*Lord Chief Justice Lee, in his direction to the jury, told them that the overt acts laid in the indictment being fully proved and not denied by the prisoner, or rather admitted by his defence, the only fact they had to try was whether he was a native of Great Britain: if so, he must be found guilty. And as to that point he said the presumption in all cases of this kind is against the prisoner, and the proof of his birth out of the King's dominions, where the prisoner putteth his defence on that issue, lieth upon him. But whether the evidence that had been given in the present case, which he summed up very minutely, did or did not amount to such proof, he left to their consideration.*" That was, of course, evidence put forward by the prisoner for the purpose of rebutting the onus which the Chief Justice had put upon him. I gather from my friend's reference to *Roscoe*, page 1099—I do not know whether I am accurate, but he will correct me if I am wrong—that *Aeneas Macdonald* was the authority for that statement of the law.

THE ATTORNEY-GENERAL: *Aeneas Macdonald* and the other case I mentioned of *Vaughan*.

MR. SLADE: My Lord, in my respectful submission that is not the law as it stands to-day and anything of that kind must be taken to have been overruled by the House of Lords in *Woolmington's* case. Indeed, *Foster* himself was overruled in dealing with the onus of proof in murder cases. Your Lordship will remember *Woolmington's* case, but perhaps I might refer to it quite shortly. It is reported in 1935 Appeal Cases. The head note is at page 462: "*In a trial for murder the Crown must prove death as the result of a voluntary act of the prisoner and malice of the prisoner. When evidence of death and malice has been given, the prisoner is entitled to show by evidence or by examination of the circumstances adduced by the Crown that the act on his part which caused death was either unintentional or provoked. If the jury are either satisfied with his explanation or, upon a review of all the evidence, are left in reasonable doubt whether, even if his explanation be not accepted, the act was unintentional or provoked, the prisoner is entitled to be acquitted. Statement of the law in Foster's Crown Law (1762), page 255, disapproved.*" And at page 480 there is the well-known passage from the speech of Lord Sankey, the Lord Chancellor, at the foot of the page: "*If at any period of a trial it was permissible for the judge to rule that the Prosecution had established its case and that the onus was shifted on the prisoner to prove that he was not guilty and that, unless he discharged that onus, the Prosecution was entitled to succeed, it would be enabling the judge in such a case to say that the jury must in law find the prisoner guilty and so make the judge decide the case and not the jury, which is not the common law. It would be an entirely different case from those exceptional instances of special verdicts where a judge asks the jury to find certain facts and directs them that on such facts the Prosecution is entitled to succeed. Indeed, a consideration of such special verdicts shows that it is not till the end of the evidence that a verdict can properly be found and that at the end of the evidence it is not for the prisoner to establish his innocence*

but for the Prosecution to establish his guilt. Just as there is evidence on behalf of the Prosecution, so there may be evidence on behalf of the prisoner which may cause a doubt as to his guilt. In either case he is entitled to the benefit of the doubt. But while the Prosecution must prove the guilt of the prisoner, there is no such burden laid on the prisoner to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the jury of his innocence. This is the real result of the perplexing case of *Rex v. Abramovitch*<sup>1</sup> which lays down the same proposition, although perhaps in somewhat involved language. Juries are always told that, if conviction there is to be, the Prosecution must prove the case beyond reasonable doubt. This statement cannot mean that, in order to be acquitted, the prisoner must 'satisfy' the jury. This is the law as laid down in the Court of Criminal Appeal in *Rex v. Davies*, the headnote of which correctly states that where intent is an ingredient of a crime, there is no onus on the defendant to prove that the act alleged was accidental. Throughout the web of the English criminal law one golden thread is always to be seen, that it is the duty of the Prosecution to prove the prisoner's guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception. If at the end of and on the whole of the case there is a reasonable doubt created by the evidence given by either the Prosecution or the prisoner, as to whether the prisoner killed the deceased with a malicious intention, the Prosecution has not made out the case and the prisoner is entitled to an acquittal."

MR. JUSTICE TUCKER: Mr. Slade, I do not want to stop you. I am very familiar with *Woolmington's* case and I do not propose at the present stage to rule that the onus is upon you; but I am disposed, subject to what you say, to hold that at the present stage there is some evidence which, if uncontradicted, would entitle the jury to come to the conclusion that this man was a British subject. If and when any other evidence is before them, it may be that in balancing up the whole of the evidence the onus would be on the Prosecution to prove, where the issue has arisen, where there is any controversy about it, that the man was a British subject.

MR. SLADE: If your Lordship pleases. I only read that—I knew your Lordship was familiar with the case—because the last sentence I propose to say on the subject is this. Assuming your Lordship is ruling against me, I would say—I am only saying it for the purpose of reinforcing my argument—supposing I were to say, "Very well, I will call no evidence," it would be for the jury to say whether the Prosecution could be said to have proved beyond all reasonable doubt that the man who from the time he was sixteen, assuming the date of birth as 1906 (and he was sixteen, when he wrote the letters in 1922) has made contradictory statements about a matter which he could have no personal knowledge of—has proved beyond all reasonable doubt either that his father was born in Galway or that he was born in Ireland. I accept your Lordship's ruling without the slightest hesitation.

MR. JUSTICE TUCKER: I think, when a man signs an application for a passport and describes himself as a British citizen, it is impossible to say there is not some evidence in favour of the proposition that he is of British citizenship.

MR. SLADE: If your Lordship pleases. I am proposing to open my case quite shortly.

May it please your Lordship, members of the jury, you have heard his Lordship rule that the prisoner's own statements that he was born in Great Britain, his claim to be a British subject, his declaration that he is a British subject, statements such as those contained in the birth certificate, that his father was born in Galway, so long as they are un-

<sup>1</sup>Vol. 7, Court of Criminal Appeal reports.

contradicted, form some evidence that he is in law a British subject. I submitted—I thought it my duty to submit—that point that there was no evidence. In point of fact I am hoping to prove to you conclusively, or as conclusively as one can prove anything, that the prisoner has never been a British subject at any time throughout his life; and to do so by admissible evidence. My Lord will direct you that, whereas the onus lies upon the Prosecution to establish a fact beyond all reasonable doubt, when, as my Lord has held, the onus shifts to the Defence—Of course you will take all those statements of practice and of the law, whatever I say, subject to my Lord's direction, he dealing solely with matters of law.

The only onus which lies upon me is of showing that the preponderance of probability is that William Joyce was never a British subject, even if any onus lies upon me at all; and that I have little doubt of my ability to do.

I am afraid you have had to listen to some rather dull quotations from law books when I was addressing my Lord on my submission. I am afraid I shall have to quote two more passages of the law to you. When I say the law I mean, as my learned friend the Attorney-General said, what in this case the Defence submits to be the law; whether it is in fact the law or not, as I say, my Lord will direct you.

I cannot hope to follow, if I may say so without presumption, or to emulate the admirable opening speech which my learned friend the Attorney-General made to you, but I am hoping to emulate it at any rate in one respect. I am hoping to be quite as dispassionate as he. If I have any powers of oratory—which I do not claim for one moment—I certainly would not use them in this case. I have not got them, but if I had I certainly would not use them. I am not going to appeal to your sympathy. It would be quite useless for me to do so and quite wrong in any case for me to do so. As I say, I am going to endeavour to be as dispassionate as my friend for the Prosecution has been, and I only ask you to bear in mind that, while he frankly admits in his very, very fair opening speech that the onus lies upon the Prosecution to prove anything against the prisoner beyond all reasonable doubt, the burden of proof which rests upon me, when any burden of proof does rest upon me, is not of that kind, but is merely to satisfy you that the balance of probability is in support of the fact which the Defence alleges to be true.

I said there were two small passages of law I shall have to trouble you with, and I have to trouble you with them because, if I do not trouble you with them, you will not know what the witnesses whom I am going to call are seeking to prove. Mr. Joyce's case, as I have told you, is that he has never been a British subject at any time throughout his life. I shall show how it is not necessary for me to go as far as that, but for the moment I will. In order to prove that he has never been a British subject throughout his life you have got to know what the law says a British subject is. I have already cited various authorities to my Lord, when I was submitting to him, showing what the law said constituted a British subject now, that is to say, since the 1st January, 1915. I read a subsection of one of the sections which showed that that state of the law was said by the Act of Parliament not to affect the status of anyone who was born before the 1st January, 1915, and I am going to ask you to assume for one moment that the birth certificate which we have exhibited is accurate in saying that Joyce was born on the 24th April, 1906. I will deal later with the place where he was born and the place where the certificate says that his father was born. Assuming that he was born in 1906, of course the 1914 Act was not passed until eight years later; and we have to deal with the law as it stood in 1906. I am going to read one passage as to what I am suggesting

the law is from a well-known book which was published in 1907, and therefore is up-to-date for the purpose of 1906; and I am then going to read to you two sections, and two sections only, of an Act which was then in force, called the Naturalisation Act of 1870. The passage I desire to read to you is from Volume 1 of the 1st edition of Halsbury's well-known *Laws of England*, pages 302 and 303, and the paragraph is No. 662: "*An alien is at common law a subject of a foreign state who has not been born within the allegiance of the Crown. The status of a person, as to whether he is an alien or not, is determined by the law of this country. Persons born within the allegiance of the Crown include (1) everyone who is born within the dominions of the Crown, whatever may be the nationality of either or both of his parents.*"

Now may I pause there for a minute? A child born in England of a Chinese father and a Portuguese mother, who I presume would be Chinese by marriage but who was Portuguese before marriage—a child born in London of a Chinese father and a Portuguese mother is British. Bear that in mind. *Prima facie* anyone born within the King's dominions, that is to say, Canada, England or where you like, is British. I will pass over (2) which merely refers to children of His Majesty the King and of ambassadors—we are not troubled with that. "(3)"—and I want you to listen to these words—"Any person whose father or paternal grandfather was born within the dominions of the Crown, although he himself was born abroad"—now these are the vital words—"provided that at the time of his birth his father had not ceased to have the rights of a British subject otherwise than by death."

Now I will summarise that and you will follow it quite clearly. Leaving out children of His Majesty and the children of His Majesty's ambassadors abroad, in 1906 you could become a British subject in one of two ways, either by being born in England—when I say England I include all His Majesty's dominions; I don't want to keep repeating myself; I will take England as the main example of His Majesty's dominions—either by being born in England or else by being born abroad, provided that your father was at the time of your birth a British subject, that is to say, he had not ceased to have the rights of a British subject (except of course by dying). You then say: 'Well, how does a person cease to have the rights of a British subject? Why not, Once a British subject always a British subject?' The answer is that until the year 1870 that was the law: once a British subject always a British subject. There was no manner of means before the year 1870 whereby any British subject could ever divest himself of his allegiance. In 1870 the Naturalisation Act was passed and I must read to you two sections. The first section I want to read to you is Section 6: "*Any British subject who has at any time before or may at any time after the passing of this Act when in any foreign state and not under disability voluntarily become naturalised in such state shall, from and after the time of his so having become naturalised in such foreign state, be deemed to have ceased to be a British subject and be regarded as an alien.*" There is a long proviso which has nothing whatever to do with this case and so I will not trouble you with it. I want you to follow that if you will, that any British subject who either before or after the passing of this Act, 1870, has become voluntarily naturalised in a foreign state, not being under a disability—you need not trouble about that; it refers to idiots, lunatics and things of that kind—shall from and after the time of his having become so naturalised cease to be a British subject. One other section and one other section only, Section 10: "*The following enactment shall be made with reference to the national status of women and children where the father being a British subject, or the mother being a British subject and a widow, becomes an*



*allen, in pursuance of this Act every child of such father or mother who during infancy has become resident in the country where his father or mother is naturalised and has according to the laws of such country become naturalised therein shall be deemed to be a subject of the state of which the father or mother has become a subject and not a British subject."*

Now summing both those passages of the law up and applying them to the facts of this case, it comes to this: Joyce will never have been a British subject if (1) he was not born in England (using England as the dominions); (2) if his father, although born in Ireland, had ceased by naturalisation to be a British subject at the time that William Joyce, the prisoner, was born; and (3)—this is a different point—if I were unable to prove that Joyce had never been a British subject, that is to say, assume against myself that I was only able to prove that his father had become naturalised after the son's birth, so that the father was still a British citizen, having been born in Ireland, at the son's birth nevertheless if the father became an American citizen at any time while William Joyce was a minor, that is to say, until he reached the age of twenty-one years, under the sub-section which I have just read to you, the moment that Michael Joyce the father, assuming his name was Michael Joyce for the moment, became naturalised after 1906 and before 1927, when William Joyce became of age, then by virtue of Section 10, sub-section 3 of the Act that I have just read to you, every child of such father or mother who during infancy has become resident in a country where the father or mother is naturalised and has according to the law of that country become naturalised therein, shall be deemed to be a subject of the state of which the father or mother has become a subject and not a British subject.

You will therefore see that there was justification for my statement some time ago that the fact that although in 999 cases out of a thousand a person who is born in this country is a British subject—in fact he always is at birth—he might not be a British subject at any particular time thereafter for two reasons: (1) he may have become a naturalised American himself, for example, in which case he would cease to be a British subject under Section 6, or (2) if he was an infant and was born abroad, his father could change his nationality for him by the father's becoming naturalised while he was still an infant.

I am sorry to have had to be rather technical, but you will now, I hope, be able to follow the reason for the evidence that I am going to call, and I will just outline the nature of the evidence. Firstly, I shall hope to be able to prove that the prisoner's father was Michael Francis Joyce who frequently called himself simply Michael Joyce. I shall prove or endeavour to prove that his mother was Gertrude Emily Joyce, formerly Gertrude Emily Brooke. I shall hope to prove that Michael Joyce was born in Ireland at a place, Ballinrobe, which I think is in County Mayo in Ireland—I cannot tell you the exact year, but it was either 1868, 1869 or 1870; that the father went to America in 1888 or thereabouts; that while he was in America in 1888 he decided to become a naturalised American citizen; that on a date in July 1892 he took the necessary preliminary steps according to American law, and I shall be calling evidence about American law, and, making what is called a declaration of intention to become an American citizen and of renouncing his allegiance to Her Majesty Queen Victoria, that on the 25th October, 1894, he took the final steps and became, according to American law, a naturalised American citizen by swearing the necessary oath before the Judge in open court in the Court of the County of Hudson in the State of New Jersey on the 25th October, 1894; that he came over for a trip to this country in 1904 or 1905 and became engaged to a lady, Gertrude Emily Brooke, who lived at a place called Shaw, which I am told

is near Crompton and Preston, two towns in Lancashire; that they were to return to America to be married; that the brother of Gertrude Emily Brooke, now unfortunately deceased, who was a solicitor, was asked to accompany them to make certain that the marriage was legal; that Gertrude Emily Brooke was married to Michael Francis Joyce in the Church of All Saints at the corner of Madison Square and 129th Street, New York, on, I think, the 2nd May, 1905, according to the rites of the Roman Catholic Church, and I shall produce a copy of the marriage certificate; that William Joyce was the first child of that union, born eleven months later, namely, on the 24th April, 1906, at 1377 Herkimer Street, I think, in New York City, certainly in the State of New York.

If I am right in my narrative so far, I hope you will have followed the legal consequences that ensue, if my statement of the law to you is correct. You have got Michael Francis Joyce, a British subject born in Ballinrobe in the County of Mayo, Eire or Ireland as it was then known, a British subject. You get Michael Francis Joyce becoming a naturalised American citizen on the 25th October, 1894. Now will you bear in mind that on the 25th October, 1894, Section 6 of the Naturalisation Act of 1870 would come into operation so far as the father Michael Joyce was concerned: "*Any British subject who has at any time before or may at any time after the passing of this Act when in any foreign state*"—in this case the United States of America—"and not under disability"—no one suggests that Michael Joyce was under any disability—"voluntarily become naturalised in such state," which was what he did on the 25th October, 1894, "*shall, from and after the time of his so having become naturalised in such foreign state, be deemed to have ceased to be a British subject.*" And therefore on the 25th October, 1894, Michael Joyce ceased to owe any allegiance whatever to Her Majesty Queen Victoria. If that is so, that means that when William Joyce was born eleven and a half years later on the 24th April, 1906, and when he was born in New York City he was born out of His Majesty's dominions and born of a father who was not a British subject at the time of his birth. In other words, William Joyce was born and always remained a subject of the United States of America, which he still is.

Assume for one moment that, although I was able to prove that Michael Joyce is an American citizen, I was unable to prove—assume it against myself—that I was unable to prove that he was naturalised on the 25th October, 1894, to take an arbitrary date, and I am taking this date for a specific reason—assume I was only able to establish that Michael Joyce was an American citizen in the year 1917, that is to say, instead of being eleven years before his son was born, it was eleven years after his son was born. If I prove that William Joyce the prisoner was born on the 24th April, 1906, in 1917 he would be eleven. I shall prove that he resided with his parents for at least three years from his birth until the year 1909 when they left for Ireland. What would happen then? We should then go from Section 6 of the Act of 1870 to Section 10, sub-section 3 of the Act of 1870: "*Where the father being a British subject*"—I am assuming against myself for the moment that he was up to 1917—"becomes an alien in pursuance of this Act"—that is in pursuance of naturalisation under Section 6—"every child of such father who during infancy has become resident in the country where the father or mother is naturalised and has, according to the laws of such country, become naturalised therein shall be deemed to be a subject of the state of which the father or mother has become a subject and not a British subject." So, I as told you, even if I fail to prove that Mr. Michael Joyce, William Joyce's father, became naturalised as an American citizen before his son's birth, it would be sufficient for William Joyce to cease to be a British subject if his father became a naturalised

American subject at any time before the date on which he attained legally his twenty-first birthday, which was on the 23rd April, 1927: his birthday was the 24th April, 1906.

Now let me give you an idea of the evidence by which I propose to prove the matters which I have outlined to you.

There are one or two difficulties, and with the consent of my learned friend the Attorney-General, if he has no objection, I propose to read a letter which has passed between my solicitor and the Director of Public Prosecutions in due course, because if the chain of evidence which I am able to give can be challenged in cross-examination I may even yet be forced—I do not think it will happen—to ask my Lord to adjourn the trial to enable the evidence of William Joyce's uncle, John Joyce, to be given (he at the present moment is in the United States) and also one other witness whose name I will mention in a moment. The position is this. There is no means known to the criminal jurisdiction of this country whereby evidence can be taken as it can in civil cases in America and used in the form of a deposition at a criminal trial in this country. I know of none and I have searched every authority; consequently there is no manner of means whereby I can force Mr. John Joyce to come and give evidence in this Court. Had I got Mr. John Joyce here, he being, of course, a contemporary of his brother Michael Francis, my task would be easier, but I do not anticipate any adjournment will be necessary in the absence of Mr. John Joyce and one witness whose name I shall mention later on. We have done our best, and I anticipate I shall be able to establish the points I wish to make to you to your entire satisfaction.

Captain Scarden seemed surprised when I suggested that he was able quite easily to identify the signature of William Joyce when he was sixteen with the signature of William Joyce when he was twenty-nine. I did not ask Captain Scarden those questions which he rather seemed to fear at the moment—witnesses are so much on the defensive when you ask them questions—I did not ask him those questions because I was challenging his veracity. I was not in the slightest. I asked him those questions because that is precisely the task with which I am confronted myself, and I thought that, if he had no difficulty in doing it, you would accept it all the more readily from my witnesses that they would have no more difficulty than he did.

Let me tell you the obvious hiatus that I have got here. First of all, I am going to produce a sealed and certified copy, and I am going to put it in, of what I will call the United States naturalisation record. That has been sealed and certified so as to become evidence automatically in a court of law under Section 7 of the Evidence Act of 1851. That document when I put it in, of course, will merely prove that *a* Michael Joyce—I emphasise the words: you will remember what my Lord said to me, and of course said quite correctly: supposing I put in my own birth certificate and handed it to you now, you would look at the birth certificate and see that *a* G. O. Slade was born on a certain date in London, but it would not be the slightest evidence; there may be fifty G. O. Slades, and if my name were G. O. Smith there might be hundreds of them; it would simply be evidence that there was *a* G. O. Slade born on the date stated in the certificate. Unfortunately, of course, both Joyce's parents are dead. I am unable to give you exact details, but I will prove their death. They both died quite recently. I think the mother died as recently as 1944 and the father in 1941—I will give you the exact dates—and, as I say, I find myself confronted with this difficulty that, when I put in the sealed copy—I shall put in a sealed copy with a photostat copy (you all know what a photostat is)—which shows the actual signatures of Michael Joyce on the oath of

naturalisation on the 25th October, 1894—What therefore I have got to do, of course, is to show that that Michael Joyce who was naturalised as an American on the 25th October, 1894, was the Michael Joyce who married Gertrude Emily Brooke on the 2nd May, 1905, and subsequently became the father of the prisoner. I hope I make that clear. That is what I have got to do.

Now I will tell you why I do it and why I asked that question of Captain Scarden. I am going to call two witnesses as to handwriting, one an expert and one the manager of the bank at which Michael Joyce kept his account for eleven years, and who was familiar with his handwriting on cheques; and they will tell you that the signatures on documents which I am able to prove conclusively were signed by Michael Joyce are the same as the two photostatic signatures on his naturalisation record of the 25th October, 1894. The difficulty is, as I say, that there is eleven years between the two closest documents that I have: the marriage you may remember I told you, took place on the 2nd May, 1905, and the naturalisation on the 25th October, 1894, that is about eleven years. Unfortunately in America, unlike this country, no part of the entry in the marriage register at the church is either in the handwriting of the bride or the bridegroom, but fortunately they do have what they call a civil entry relating to the marriage in America, and the search of the civil entry of the marriage of that couple who were married on the 2nd May, 1905, has disclosed the fact that the whole of the left-hand side which contains the particulars of the bridegroom is in the handwriting of the bridegroom, Michael Francis Joyce, and the whole of the right-hand side which contains the particulars of the bride is in the handwriting of Gertrude Emily Brooke, who became Gertrude Emily Joyce. I have got plenty of others, but the earliest date I have for the purpose of comparing the known signatures with the naturalisation record signature is the civil entry in the marriage certificate, known to be (and I shall prove to be) in the handwriting of the father of the prisoner, the 2nd May, 1905.

In addition to that, the handwriting experts will have in front of them a tenancy agreement with the Royal Irish Constabulary dated 1910; they will have in addition to that a will—what we call a holograph will entirely in the handwriting of Michael Joyce and of course signed by him in 1907; they will have a cheque drawn by Michael Joyce in favour of the prisoner William Joyce dated the 26th April, 1923; they will have an L.C.C. Education form signed by Michael Joyce on the 20th November, 1935; and finally they will have a letter signed "Father," and written entirely in Michael Joyce's handwriting, which was sent by the father to his son, that is to say, to the prisoner's brother Edward Quentin Joyce, in March 1940. I cannot get anything nearer than that because, as I told you, Mr. Michael Joyce the father died in 1941. I shall have no difficulty in proving that all those documents are in the handwriting of Michael Joyce and Edward Quentin Joyce. All those documents will be available to the one expert and the bank manager for comparing with the evidence of the two signatures where they appear upon what is called the petition of naturalisation and the oath sworn and subscribed in open Court by Michael Joyce who was naturalised in October 1894.

My friend Mr. Curtis-Bennett reminds me that we have got some more signatures now, if we want them, because we have the documents which were produced by Miss Isaac, you may remember, about the O.T.C., and I elicited from that witness in cross-examination that, having received information from William Joyce, she communicated with the father Michael Joyce and she actually produced the original of Michael Joyce's reply, so we have the signature to that document which will serve as a further comparison. So much for bridging the gap between 1894 and 1905, but of

course I should not rely solely upon that. That is all I can get so far as the actual identification of the Michael Joyce with the Michael Joyce we are concerned with.

So far as the question of whether Michael Joyce was a British subject or not is concerned, I can give you a good deal more evidence. I shall be calling Mr. Holland and, if his evidence should be challenged in cross-examination, I shall be calling his wife also, Mrs. Holland. I shall call Mr. and Mrs. Holland, or Mr. Holland alone as the case may be, to prove this, that Gertrude Emily Brooke was a schoolfriend of Mrs. Holland at Shaw in Lancashire, that both she [Mrs. Holland] and her husband remember when Michael Joyce came over from America and became friendly with Gertrude Emily Brooke, the wife's schoolfriend. They remember the two becoming engaged and they remember the two of them leaving for America to get married. This is the most helpful part of the Hollands' evidence. It so happened that in 1906 Mr. and Mrs. Holland decided to emigrate themselves, and they reached New York State—it may be New Jersey, I don't know—at any rate they will say that they lived at an address which was only eleven miles, curiously enough, from the address where the Joyces were then living as husband and wife; that is to say, Mrs. Holland found herself living at a distance of only eleven miles from the address where her old schoolfriend lived at Herkimer Street and they became visitors to each other at alternate week-ends. Mr. Holland will say that when he reached New York the Joyces had a baby aged six or seven months, a baby named William, and they will say that they know that baby and they will identify that baby, because they kept in touch with the parents throughout, as being the prisoner William Joyce. Now that is quite disinterested and dispassionate evidence and, if that is true, you will see that, even though I could not prove the date of the birth, if for any reason I fail to prove, if I am required to prove what purports to be the birth certificate—you will have the fact that William Joyce, in October I think it was, they can only say looked five or six or seven months old—they cannot bind themselves down to the exact month. You will have the fact that in October 1906, when the Hollands in America paid their first visit to their old friend Mrs. Joyce, formerly Miss Brooke, they had a baby William who was six or seven months old, and that he is that man. Not only that, but, as I say, they visited alternately at each other's homes for some three years at week-ends until Mr. and Mrs. Joyce decided to return to Ireland.

I thought passports were a comparatively recent persecution, but at any rate they were in use in 1909. I thought they came in more or less in the last war, but in 1909 they were in use in America because Mr. Holland will tell you that Mr. Michael Joyce had to get a passport to return from America to Ireland, and by the day that he left New York for the port of embarkation the passport had not arrived, and therefore Mr. Holland consented to wait for the arrival of the passport so as to be able to deliver it personally to Mr. Michael Joyce the moment it arrived. He did wait for the arrival of the passport, and it did arrive, and Mr. Holland did hand it personally to Mr. Michael Joyce and—this is the salient point—he will tell you that it was an American passport.

The next evidence I shall call before you is this. I shall prove to you that during the last war, namely, in 1917—and this is why I take the year 1917 as an illustration—both Mr. and Mrs. Joyce were forced to register as aliens in this country in Lancashire, and I have served a subpoena upon the representative of the Chief Constable of the County of Lancaster to produce the Register of Aliens for Shaw in Lancashire, or that portion of Lancashire round Shaw, purporting to show the registration of those two persons as aliens.

Now I suppose it is unlikely that any very technical objection will be taken to the admissibility of evidence in a case like this, and, if any objection is taken, it is a matter for my Lord to rule upon; but, if necessary, Mr. and Mrs. Joyce both being dead, I shall submit that an admission of alienage by a deceased person is what we call a declaration against interest and a declaration by deceased persons which is against their own, as the law says, financial or proprietary interests is admitted upon the footing that a person is unlikely to make an untrue statement against his own interests. That is the footing upon which it is admitted, and also this document is a document which is kept in the custody of the police and never leaves the custody of the police, and I shall be able to prove to you by producing the register that in the year 1917 in the Register of Aliens there are two entries—one is numbered 10272 and the other 10273—and they refer to the Mr. and Mrs. Michael Joyce who were formerly Mr. Michael Joyce and Miss Gertrude Emily Brooke, and this is what it says: "*Register of Aliens. Serial number and date of entry 10272, 28.4.1917. Surname: Joyce. Christian name: Michael. Nationality and birthplace: nat. American*" which I construe to mean 'naturalised American.' "*Birthplace: Galway, Ireland. Postal address: 31 Manchester Road, Shaw. Trade or occupation and name of employer, if any: nil. Date of birth*"—in this case it gives the 6th December, 1866. "*Householder, leaseholder, lodger or servant: Lodger. 10273,*" same date, "*28.4.17. Joyce, Gertrude Emily. Nationality and birthplace: American by marriage.*" Of course, the wife always takes the nationality of her husband. "*Crompton, Lancs.*" As I told you, Shaw is near Crompton. "*Postal address: 31 Manchester Road, Shaw. Date of birth: 26th August, 1887.*" And apparently somebody took the trouble to correct that, because 1887, which is the date of Mrs. Joyce's birth, is altered to 1879 and initialled on the 20th July, 1917, and it says here, "*Particulars of family (column 9) Wife, Gertrude E. Son, William, 24.4.06.*"—the same date in those particulars, 1906—"Daughter, Frances, 29.4.12. *Visiting Shaw to settle probate of will, then returning to Ireland.*" I have limited myself at the moment to reading to you the entries which appear on the actual Register of Aliens themselves.

I shall also get a witness from the Chief Constable's office of the Lancashire County Council to produce certain correspondence which took place between them and the police in Galway, but I am not going to deal with that in my opening remarks until I am satisfied that the evidence of that correspondence is admissible in favour of my client.

MR. JUSTICE TUCKER: Mr. Slade, at any moment that is convenient to you it will be convenient to adjourn.

MR. SLADE: It will be quite convenient now, my Lord.

MR. JUSTICE TUCKER: Members of the jury, we will adjourn now. Since the year 1940 it is now possible for juries in cases of this kind to be allowed to separate and go to their homes; before that you would have been kept all together in some convenient place. But make sure that, although you are now allowed to separate, you do not discuss this case with anybody or allow anybody to discuss it with you, please.

## SECOND DAY.—TUESDAY, 18TH SEPTEMBER, 1945.

MR. SLADE: May it please your Lordship, members of the jury, when we adjourned yesterday I had reached the stage where I was about to read to you what I called the naturalisation record. May I have the sealed copy? I formally put in this certified copy of the naturalisation record.

MR. JUSTICE TUCKER: What is it called, Mr. Slade?

MR. SLADE: I have called it the naturalisation record. It consists of two documents, one called the Declaration of Intention, that was on the 22nd July, 1892, and the other called the Petition, which is dated the 25th October, 1894; and the rest of the documents which your Lordship has are merely necessary variations of it following judicial proceedings.

MR. JUSTICE TUCKER: What is the date of the document itself, not of the certification of it?

MR. SLADE: The first document is headed: "*State of New Jersey. Be it remembered that on the 22nd day of July, 1892*"—

MR. JUSTICE TUCKER: Yes.

MR. SLADE: And the second document is the Petition of Michael Joyce. Your Lordship will see that the third time the name Michael Joyce appears it says: "*Sworn in Open Court this 25th day of October, 1894.*"

MR. JUSTICE TUCKER: Yes.

MR. SLADE: I have one spare photostat; perhaps your Lordship will allow the jury to have one copy.

MR. JUSTICE TUCKER: When it is convenient, Mr. Slade.

MR. SLADE: Members of the jury, I have not sufficient copies to provide you all with photostat copies of these documents, but I am going to tell you quite shortly what they are. I mentioned yesterday that in the year 1894—I have no knowledge of the law of America, but I have evidence to prove it—as the law then stood the pre-requisites for American naturalisation were that the applicant should have resided in the United States for a period of five years; that he should make a Declaration of Intention to apply for naturalisation two years before he actually obtained naturalisation, and, I think—I speak subject to correction as to American law—thirdly, that he should have resided in the State where he applied for naturalisation for a period of not less than one year.

There is one other very important point I have to mention to you. Both these documents I am going to read out are printed forms with the appropriate particulars filled in in ink. The Declaration of Intention, although it bears the signature "Michael Joyce," is not signed in the handwriting of Michael Joyce, because apparently the practice in those days was for the Intention to be drawn by the Clerk of the Court, and a glimpse at this document, the Declaration of Intention, shows that the whole of the inked particulars that are filled in are in the same handwriting—not only the signatures but the body of the document. I only mention that because no one here is suggesting that what purport to be the signatures of Michael Joyce on the Declaration of Intention are in fact the signatures of Michael Joyce. But, when one comes to the Petition, the name "Michael Joyce" appears four times. It starts with "The Petition of Michael Joyce"; that is merely written in, and is not in Michael Joyce's handwriting. The second time it says: "He therefore prays he may be admitted to become a citizen of the United States." That is the second time where the name appears, and that is, according to the case for the Defence, in the signature of Michael Joyce. The third occasion where it appears is: "I, Michael Joyce, the above-named petitioner"; that again is not the signature of Michael Joyce. And the fourth time where it appears it says, "Sworn in Open Court this 25th day of October, 1894, Michael Joyce," with the signature of the Judge immediately underneath it; that is in the handwriting of Michael Joyce.

Recapitulating therefore, of the four times in which the name Michael Joyce appears in the Petition, sometimes referred to as the Application, the second and fourth times are in the signatures of the Michael Joyce who we seek to prove was the father of the prisoner.

I will read the documents through. The first is the Declaration of

Intention:—"State of New Jersey. Be it remembered that on the 22nd day of July in the year of our Lord 1892 before me, Dennis McLaughlin, Clerk of the Court of Common Pleas in and for the County of Hudson (the said Court being a Court of Record having Common Law Jurisdiction and a Clerk and Seal) personally appeared Michael Joyce, an alien, a native of Ireland, aged about 25 years who, being duly sworn according to law on his oath, doth declare and say that he arrived in the United States on or about the 4th day of May in the year of our Lord 1888"—that was the year I told you of yesterday—"and that it is his bona fide intention to become a Citizen of the United States and to renounce forever all allegiance and fidelity to any and every foreign prince, potentate, state and sovereignty whatever, and particularly to the Queen of the United Kingdom of Great Britain and Ireland, whose subject he has heretofore been. Subscribed and Sworn to before me this day and year written above. Dennis McLaughlin, Clerk. (Signed) Michael Joyce"—it is not in fact signed by Michael Joyce—"State of New Jersey, Hudson County. I, Dennis McLaughlin, Clerk of the Court of Common Pleas in and for the County of Hudson aforesaid, do hereby certify that the foregoing is a true copy of the Declaration of Intention to become a Citizen of the United States of America, of Michael Joyce as the same is filed of record in my office. In testimony whereof I have hereunto subscribed my name and affixed the Seal of the said Court in the County aforesaid, this 22nd day of July A.D. 1892. Dennis McLaughlin, Clerk."

Then the vital document is the Petition. I am sorry that the photostat copy on the face of it is not too clear. It reads: "To the Judges of the Court of Common Pleas in and for the County of Hudson, State of New Jersey. The Petition of Michael Joyce, a native of Ireland, respectfully sheweth: That your petitioner arrived in the United States of America in the year 1888 and that in pursuance of an act of Congress, entitled 'An Act to establish a uniform rule of Naturalisation and to repeal the Acts heretofore passed on that subject,' made a declaration of his intention to become a Citizen, conformably to the said Act, before this Court, a certificate whereof is hereunto annexed; that he has resided within the limits and under the jurisdiction of the United States for five years, and for one year at least within the State of New Jersey; that he has never borne an hereditary title or been of any orders of nobility in the kingdom whence he came, or elsewhere. He therefore prays he may be admitted to become a citizen of the United States. Michael Joyce." That, as I have said, is in the handwriting of Michael Joyce. "I, Michael Joyce"—not in the handwriting of Michael Joyce—"the above-named petitioner, do, on my solemn oath, declare that the contents of my Petition are true; that I will support the Constitution of the United States; that I will renounce and relinquish any title or order of nobility to which I am or hereafter may be entitled; and that I do absolutely and entirely renounce and abjure all allegiance and fidelity to any Foreign Prince, Potentate, State and Sovereignty whatever, and particularly to the Queen of the United Kingdom of Great Britain and Ireland. Sworn in Open Court this 25th day of October, 1894. Michael Joyce." That is the signature of Michael Joyce.

Then it bears the signature: "John Kenny, Judge, State of New Jersey, Hudson County. John Duane, a citizen of the United States, being duly sworn according to law, says that he is well acquainted with the above-named Petitioner, and that, to his knowledge and belief, he has resided within the limits and under the jurisdiction of the United States for five years, and for one year at least within the State of New Jersey, and that, during the same period he has behaved himself as a man of good moral character, attached to the principles and Constitution of the United States, and well



*disposed to the good order and happiness of the same. John Duane. Sworn in Open Court this 25th day of October, 1894. John Kenny, Judge."*

Members of the jury, you may remember that I told you yesterday that, if my evidence on these points should be challenged, it might be necessary for me to apply to his Lordship for an adjournment with a view to getting the evidence of John Joyce, the uncle of the prisoner, and I mentioned at the time there was one other witness whose evidence it would be necessary for me to obtain. I will tell you who that witness is, John Duane, the attesting witness or referee. He is dead, but his brother Joseph Duane is alive, and Joseph Duane is in America. If I bring him here—I cannot pretend to say what he would say—he might say his brother was known to be the friend of Michael Joyce who later married Gertrude Emily Brooke, but I say no more about it for the moment. That is Joseph Duane. I am calling at least one, and, if his evidence should be challenged, a second American lawyer, who will prove to you that the moment that oath was sworn in open court by Michael Joyce on the 25th October, 1894, without more he thereupon became, according to the American law as it stood in 1894, a citizen of the United States of America. Why the renunciation of allegiance is expressed particularly with regard to Her Majesty Queen Victoria is because, if you are to become a subject by naturalisation and were previously a subject of Great Britain, the particular renunciation would be to the Queen of Great Britain. If you had been a subject of the King of Spain, the particular renunciation would have been to the King of Spain.

There is not much more I want to trouble you with at this stage. I want to say a few words about the birth certificate. I do not suppose you have seen it yet, but you will have it later. You will remember that it says: "New York, November 2nd, 1917." Of course, in 1917 the prisoner, assuming he was in fact born on the 25th April, 1906, would be eleven and a half years old. As you know, in this country anyone can go to Somerset House at any time and obtain a certificate of their birth. This certificate was obtained on November 2nd, 1917, showing the birth on the 24th October, 1906: "*A Transcript from the Records of the Births reported to the Department of Health of The City of New York. Registered Number, 11596.*" I merely emphasise this because, if this were a document produced by the German lie-factory, nothing would have been simpler than to make inquiries in New York as to whether a registered number 11596 in fact appeared as the registered number of the birth of William Joyce. "*Name of Child: William Joyce. Sex: Male. Colour: White. Date of Birth: April 24/06*"—I want you particularly to notice this—"Place of Birth: 1377 Herkimer Street. Father's Name: Michael Joyce. Father's residence: 1377 Herkimer Street. Father's birthplace: Ireland. Father's Age: 36 years." That would have made his birth in 1870, would it not? I told you it was 1868, 1869 or 1870. "*Father's occupation: Contractor. Mother's marriage name: Gertrude Emily Joyce. Mother's name before marriage: Gertrude Emily Brooke. Mother's residence: 1377 Herkimer Street. Mother's birthplace: England. Mother's age: 26 years. Number of children born to this mother, including present birth: One. I, the undersigned, hereby certify that I attended professionally at the above birth and I am personally cognizant thereof, and that all the facts stated in said certificate and report of birth are true to the best of my knowledge, information and belief. Signature: Charles F. Yerden, Physician. Residence: 1276 Herkimer Street. Date of Report: May 7th, 1906. A True Copy. S. J. Byrne, M.D. Assistant Registrar.*"

I am calling Mr. Edwin Quentin Joyce, the prisoner's brother, who will produce to you a copy of his parents' marriage certificate. Just so

that you may follow the chain of evidence, I will tell you what that says. It starts with a quotation from the Gospel according to St. Matthew. "*All Saints Church, Madison Avenue and 129th Street, New York. This is to certify that Michael F. Joyce and Gertrude E. Brooke were lawfully married at All Saints Church on the 2nd day of May, 1905, according to the Rite of the Roman Catholic Church, the officiating priest being the Rev. C. F. Crawley, with John J. Ferris and Mary Naughton as witnesses, as appears from the Matrimonial Register of this Church. (Signed). Rev. J. W. Power, Pastor, c/o Mr. B. Stanton, Sexton. 21st June, 1905.*" As I told you, it is not the practice in the churches, certainly not in the Roman Catholic churches in New York, for either the bride or the bridegroom to make any entry in the marriage register, as it is of course in this country; and in order to assist you—and for this I am indebted to the Prosecution—they have been kind enough to supply me with a photostat record of the civil entries of that marriage, and I am going to put in a copy of that. It is not too easy, but I will try to get as clear a copy for your Lordship as I can. I am told that there is a sealed copy here which I call for, and perhaps I might hand the sealed copy to your Lordship. I formally put that in.

Before your Lordship looks at it, my friend suggests that I have to call some witness to put it in. In my submission I have not to do so; I have been supplied with it by the Director of Public Prosecutions.

MR. JUSTICE TUCKER: Mr. Slade, will you elaborate your story?

THE ATTORNEY-GENERAL: My Lord, I am taking no point about it, and I do not seek to put any kind of difficulty in my learned friend's way, but I think it is right that some witness—any witness, I apprehend—could produce it in the witness-box and say he produced it, so that it appears on the shorthand note as being produced in the proper form. My learned friend is calling a number of witnesses, and he can well call one if he wishes to put it in.

MR. JUSTICE TUCKER: Mr. Attorney, I think the position is that every document requires a witness to prove it properly, unless it is a document which proves itself; one or the other. I don't think there is any magic in calling a witness totally unconnected with the document simply to say as a matter of form, "I produce it."

THE ATTORNEY-GENERAL: My Lord, it has got to be produced from some custody, I think.

MR. JUSTICE TUCKER: Yes, to make it an official document.

THE ATTORNEY-GENERAL: Yes, my Lord.

MR. JUSTICE TUCKER: Then it proves itself.

THE ATTORNEY-GENERAL: Some of the documents prove themselves, some are copies which are put in which have to be proved in the absence of the original.

MR. JUSTICE TUCKER: This document comes from your custody; can you suggest some witness who can be called?

THE ATTORNEY-GENERAL: I think it might preferably be the American lawyer to produce this document.

MR. JUSTICE TUCKER: Mr. Slade, I think we had better wait for a moment.

THE ATTORNEY-GENERAL: I hope your Lordship will not think I am objecting to Mr. Slade opening the whole of his case and putting in the document at this stage. But I respectfully suggest, in view of the form of words which my learned friend used, that it would be best to have a witness at some stage.

MR. SLADE: Far from making the slightest complaint, I wish to say that the Prosecution have been of the utmost assistance to me. I don't see how I should serve any useful purpose by calling a witness to produce documents

who knows nothing about them. Might I do this, in order to meet my friend's reasonable requirements? I am calling an American lawyer who will, no doubt, be able to prove that the American law requires civil entries to be made of a marriage in New York State—or New Jersey State as the case may be—and ask him to produce the document in that way.

MR. JUSTICE TUCKER: Perhaps we had better wait and see what the witnesses do say.

MR. SLADE: Does your Lordship think I ought not to open it to the jury?

MR. JUSTICE TUCKER: I think it is better that you should not.

MR. SLADE: Then it will, of course, cause a hiatus in my remarks, but I will say no more about it.

MR. JUSTICE TUCKER: You have made the position very clear to the jury, Mr. Slade. It is merely a step in building up your submission that this man is an American citizen.

MR. SLADE: If your Lordship pleases. Members of the jury, I shall have to defer giving you the information by which I hoped to connect quite definitely the birth certificate with the prisoner. You may remember that the position in regard to the birth certificate is this. The birth certificate was not found on the prisoner; it was produced to him by Captain Scarden on the 1st June, 1945, and he acknowledged it to be his property. You will bear in mind that it states that William Joyce is the son of Michael Joyce and Gertrude Emily Brooke, but there is one other document I am going to read to you because I am calling, as I intimated, the representative from the office of the Chief Constable of the County of Lancashire to produce the Aliens Register. I read that out to you yesterday. You may remember that that says this, referring of course to the year 1917: "*Particulars of Family: Gertrude E.*"—there is a separate registration for her—"Son, William, 24.4.06." In other words, the date of birth precisely corresponds with the date of birth shown on the birth certificate, and the name of the wife and of her maiden surname exactly corresponds of course with the mother of William Joyce who married Michael Joyce.

The only other matters I have to mention are these. I told you that both the father and the mother of the prisoner were dead. I will prove by evidence the dates when they died. The father, Michael Francis Joyce, died on the 19th February, 1941, and the mother died on the 15th September, 1944. That, of course, is why I am unable to call either of them to prove that William Joyce was their son, and I am unable to call Michael Joyce himself to prove that he was the person who was naturalised in 1894.

Two further observations only, and I will call my evidence. Firstly, I am not calling the prisoner, and I am not calling him as a witness because, as you have heard, in the submission which I made to my Lord, he cannot possibly give you any evidence of when or where he was born. Secondly, still less can he give you any evidence of when his father was naturalised.

And my final word is with regard to what has been called count 3. You have probably followed the argument upon count 3, and I am not going to discuss with you questions of law or attempt to trouble you with them, but the argument for the Prosecution upon count 3 is this: You, William Joyce, applied for a British passport, stating that you were a British subject by birth. As a result of that application a British passport was in fact issued to you which lasted for five years. You applied for renewal of that passport, again stating that you were a British subject by birth, or that your status had not changed, and a renewal was given to you for the space of one year. At the expiration of that year you again applied for a renewal of the passport, stating the same as before, and in consequence of that application a second renewal was given to you, which I understand it is suggested expired on the 2nd July, 1940. I am not in a position to

dispute that evidence and I do not intend to dispute what is incontrovertible. Whether those facts bring upon the prisoner the duty of allegiance is, as I understand it, a pure question of law which his Lordship will decide. I therefore do not propose to trouble you with any arguments upon that point, or with any submissions upon that point. I will make them at the proper time to my Lord, and now with the assistance of my learned friends I will call my evidence before you.

FRANK HOLLAND, *Sworn.*

*Examined by MR. CURTIS-BENNETT.*

Q. Is your name Frank Holland? A. I don't hear very well.

MR. JUSTICE TUCKER: Will you come and stand a little nearer?

MR. CURTIS-BENNETT: Is your name Frank Holland? A. Yes, sir.

Q. Do you live at Pear Tree Cottage, Hoath, Canterbury, Kent? A. Yes, sir.

Q. Are you a retired civil engineer? A. Yes, sir.

Q. Were you born at a place called Shaw in Lancashire on the 31st March, 1883? A. Yes.

MR. JUSTICE TUCKER: Is he hearing you or answering you, Mr. Curtis-Bennett?

MR. CURTIS-BENNETT: He is certainly answering me, my Lord; I hope he is hearing me.

MR. JUSTICE TUCKER: He was born at Shaw in Lancashire when?

MR. CURTIS-BENNETT: On the 31st March, 1883. *(To the witness)* Did you know a lady whose name was Gertrude Emily Joyce? A. I did.

Q. What was her name before she married? A. Gertrude Emily Brooke.

Q. Gertrude Emily Brooke was her maiden name, was it? Was she a school-friend of your wife? A. Yes, she was.

Q. You married your wife in September 1905, I think? A. September 7th, 1905.

Q. What was Miss Brooke, as you first knew her, called by way of Christian name or nickname? A. She was known as "Queenie."

Q. Do you know whom "Queenie" married? A. Michael Joyce.

Q. Do you know when she met Michael Joyce? A. I am not certain on that point, but I believe it was in Ireland.

MR. JUSTICE TUCKER: Did he know Michael Joyce personally?

MR. CURTIS-BENNETT: It will come in a moment, my Lord. He has not yet stated. *(To the witness)* Do you know that Gertrude Emily Brooke went to the United States in 1905? A. Yes, sir.

Q. You weren't there when she got married, were you? A. No.

Q. Did you yourself emigrate to the United States in May 1906, with your wife? A. Yes, I know that her brother Edgar went with her.

Q. So she left Ireland with her brother to get married in 1905? A. Yes.

Q. With her brother who was a solicitor? A. Yes.

Q. And you followed in May 1906? A. Yes.

Q. Where did you live when you got to the United States? A. Westerley, Rhode Island.

Q. After that where did you live? A. New York City.

Q. About how soon after you got to the United States did you live in New York City? A. Approximately six months.

Q. Somewhere about November 1906, that would be? A. Yes.

Q. Were you in the employ of contractors for the Pennsylvania Railway Company? A. Yes.

Q. Was your address 1019 Boston Road, New York City? A. Yes.

Q. When you got to New York at about the end of 1906 did you see anything of Gertrude Emily Joyce, as she then was? A. It was the first visit we paid.

MR. JUSTICE TUCKER: Ask him to repeat it a little louder. What did he say last?

MR. CURTIS-BENNETT: He said, "I think it was about the first visit we paid."

MR. JUSTICE TUCKER: What was?

MR. CURTIS-BENNETT: The visit to the Joyces.

THE WITNESS: Yes; it was because they were the only people we knew in New York, and we went there naturally.

Q. Can you remember where they were living? A. They were in Brooklyn.

Q. I may be able to direct your memory to something in a moment, but do you remember their address, or the name of the street in which they lived? A. I can't say that I remember the address; it was Herkimer Street or Herkimer Road.

Q. It was either Herkimer Street or Herkimer Road? A. I think so.

Q. I will leave it there for the moment. When you went there, did you meet your old friend Gertrude Emily Joyce and her husband? A. Yes.

Q. Michael Joyce. A. Yes.

Q. Was that the first time you had met Michael Joyce, or had you met him before? A. That was the first time I actually met him, but I think I remember seeing him in Shaw when he came to see his wife's family before they were married.

Q. His fiancée's family? A. Yes; I can't be clear on that; that was the first time I met him.

Q. Had they any children or child when you got there in 1906? A. One boy, William Joyce.

Q. About how old would he be roughly when you saw him at the end of 1906? A. I should think a few months; I can't remember exactly.

Q. He was a few months old, was he? A. Yes.

Q. Used you to visit the Joyces seldom or often after that? A. Very often. They either came to see us or we went to see them.

Q. About how often did you see each other, roughly, at that time? A. I wouldn't be able to tell you that; once a month perhaps.

Q. Up to what time did you continue to see them constantly—for how many years or how many months? A. Michael Joyce left Brooklyn some time in 1909, and his wife followed very shortly afterwards.

Q. Michael Joyce left New York in about 1909, and his wife went before or after? A. Afterwards.

Q. That was without the son, William Joyce, or did the son go too? A. The son went too; to Ireland, I believe.

Q. You believe they went to Ireland? A. Yes.

Q. From the first time when you got there in the winter of 1906 up till 1909 had you seen this boy gradually growing up? A. Yes, I had visited his father's house.

Q. Now I want to test your memory about something. Before Michael Joyce went away from the United States, did he have to have some sort of document? A. A passport he had.

Q. I think Michael Joyce left for the port of embarkation before the passport arrived; he left for New Jersey before the passport arrived? A. He left his home in Herkimer Street; I took his passport to Hoboken in New Jersey.

Q. Did you notice what sort of passport it appeared to be? A. No, I did not. I was just asked to take his passport, and I took it.

Q. Where did you get it from? A. From his wife.

Q. Did she hand it to you? A. Yes.

Q. That would be in New York City, would it? A. In Brooklyn.

Q. That was the last you saw of the Joyces for a bit, was it not? A. His wife remained, and we saw her more in that period than we had before.

Q. And then she in turn went off from the United States too? A. Yes.

Q. With the boy William Joyce? A. Yes.

Q. Had you any knowledge of the nationality of Michael or Gertrude Joyce when you were seeing them in New York?

THE ATTORNEY-GENERAL: My Lord, would that be evidence?

MR. JUSTICE TUCKER: Well, if what the prisoner said as to his nationality is evidence, why is not what the father said evidence?

THE ATTORNEY-GENERAL: An admission made by the prisoner is evidence against himself; the father is not a party to these proceedings.

MR. JUSTICE TUCKER: No, he is dead, and I shall admit the evidence, Mr. Attorney.

THE ATTORNEY-GENERAL: If your Lordship pleases.

MR. CURTIS-BENNETT: Do you know where Michael Joyce was born? A. No.

Q. In what country, do you know?

MR. JUSTICE TUCKER: You are straying a little from the question you asked. I think you are entitled to know whether the man, at the time he knew him, was passing as an American subject.

MR. CURTIS-BENNETT: That is what I intended to ask him. (*To the witness*) You knew Michael Joyce for about three years, I believe? A. Between two and three years.

Q. Do you know whether he was passing under any particular nationality, and if so, what, at that time? A. He told me he was an American citizen; he advised me to become one too.

Q. With regard to that passport which you carried from Mrs. Joyce to Mr. Joyce, have you any recollection as to what sort of passport that was? A. No.

Q. As we know, the first world war broke out in 1914. Did you come across to England in 1915? A. Yes. January, 1915.

Q. With your wife, and did you go to Shaw? A. I went to Marske-by-Sea in Yorkshire.

Q. You came back with your wife to this country? A. Yes.

Q. By that time had you changed your nationality or not? A. The contractors—

MR. JUSTICE TUCKER: Do answer the question, please.

MR. CURTIS-BENNETT: Had you by that time changed your nationality or not? A. Yes.

Q. What to? A. An American citizen.

Q. When did you do that, in what year—before the war or after? A. Before the war, when I was working for S. Pearson & Son on the State contract for New York.

Q. How long before the first war broke out did you become an American citizen. A. Five years, I should think.

MR. JUSTICE TUCKER: What does he say?

MR. CURTIS-BENNETT: "About five years before the first great war I think I became an American citizen." (*To the witness*) When you were in England at that time from 1915 onwards, did you see anything of your friends Mr. and Mrs. Joyce? A. No, I did not.

Q. When did you next see Mr. and Mrs. Joyce or their son? During the war was it? A. No, I think they were in Ireland.

Q. Did you see them during the war? Did they ever come over to this country? A. I don't know about that; I don't remember I saw them because I was busy on Government work.

Q. When did you next see them after they left New York in 1909? When after that did you next see them, and where? A. I should think it was about 1919.

- Q. Where did you see them, in what place? I do not mean in what house?  
A. East Dulwich.
- Q. Did they still have their boy William Joyce? A. Yes, and other children.
- Q. If he was born in 1906, by 1919 he would be about 13, would he not; that is a matter of arithmetic. Did you ever see him at a place called Shaw in Lancashire? A. See who?
- Q. Either of the Joyces; Mr. or Mrs. or William? A. No, I never went to Shaw myself.
- Q. Then you can't have seen them at Shaw. Did you have to register yourself as an alien over here? A. Yes.
- Q. Do you know whether Michael or his wife had to register? A. I do.
- Q. What as? A. As an alien.
- Q. When was that that they were registered as aliens here, in about what year? A. I think 1917, when I had to register as an alien.
- Q. How do you know that, if you didn't see them until 1919. Was that something they told you? A. Yes, I know it because it almost amounted to persecution when I arrived in this country.
- Q. Listen again. How did you know that the Joyces had to register as aliens in 1917, if you didn't see them until 1919? A. As I say, it almost amounts to persecution; if you are an alien in this country the police hunt you from one county to another.
- Q. I will try once again; don't worry about the persecution. A. No, but you asked me how I know, and I am telling you, because she told us of the trouble she was having.
- Q. In 1916 did you go back to the United States in the employment of the British Government? A. Yes, I did, as a British subject.
- Q. Did you come back here in 1917 or about 1917? A. Yes.
- Q. Were you then working in Yorkshire helping to build a school for gunnery? A. Yes, that's right; I made a mistake in the first statement. That was the time I went to Yorkshire. The first time I did not go to Yorkshire, I went to Shaw in Lancashire.
- Q. It isn't easy to remember all these things. When you came back here in 1915, do you now say you went to Shaw in Lancashire? A. Yes.
- Q. Was that where you had to register as an alien? A. Yes.
- Q. Did you ever see the Joyces at Shaw? A. I don't remember.
- Q. Then you came back, as we know now, in 1917, and were you helping to build a school for gunnery? A. Yes, I was.
- Q. And in 1919 you told us you saw the Joyces again who came over on a visit? A. Yes.
- Q. Did you see the Joyces on and off from that time onwards? A. Mrs. Joyce and the children, yes.
- Q. Up till when? A. Almost up till Mrs. Joyce's death.
- Q. That would be in 1941, would it not? A. Later than that.
- Q. 1944? A. Yes.
- Q. Seeing the child, William Joyce, when he was a small baby, seeing him up till he was three, seeing him in 1919, and seeing him again when he came back, can you tell us by looking round this court who William Joyce is? A. That is William Joyce. (*Indicating prisoner.*)
- Q. You kept in touch with the Joyce family all those years, did you? A. Yes.
- MR. CURTIS-BENNETT: I am going, with my learned friend's leave, to put this document to the witness. (*To the witness*) Will you look at this, Mr. Holland, before we read it. One side of the document has writing in one hand, has it not? A. Yes.
- Q. And the other side in another hand? A. Yes.
- Q. Do you recognise either of those handwritings? A. Do I recognise either?

Q. Yes. A. Yes.

Q. Which one, left- or right-handed, or both? A. "Gertrude Emily Brooke."

Q. That is the right-hand side, is it not? A. Yes.

Q. You recognise that handwriting in the entry, do you? A. Yes.

Q. Do you recognise the one on the left or not? A. No sir.

MR. JUSTICE TUCKER: What does he say?

MR. CURTIS-BENNETT: "I believe I recognise the handwriting on the left."

However, I produce this document now. It reads like this: "*The City of New York. Department of Health. State of New York. Certificate and Record of Marriage. No. of Certificate*"—a number which I can't read—"of Michael F. Joyce and Gertrude E. Brooke. Groom's Residence: 1377 Herkimer Street. Bride's Residence: Shaw, Lancashire, England. Groom's Age: 36 years. Bride's Age: 25 years. Groom's Colour: White. Bride's Colour: White. Groom Single, Widowed or Divorced: Single. Bride Single, Widowed or Divorced: Single. Groom's Occupation: Contractor. Birthplace: Ireland. Bride's Birthplace: England. Groom's father's name: Martin. Bride's father's name: William. Groom's mother's maiden name: Mary Naughton. Bride's mother's maiden name: Emily Warburton. Number of Groom's marriage: 1st. Number of Bride's marriage: 1st. I hereby certify that the above-named Groom and Bride were joined in marriage by me in accordance with the Laws of the State of New York at All Saints R.C. Church in the Borough of Manhattan, City of New York, this 2nd day of May, 1905. Signature of person performing the Ceremony: C. A. Crowley. Official Station: Clergyman. Residence: 47 E. 129th Street, N.Y. Witnesses to the Marriage: John J. Ferris. Mary Naughton." (To the witness.) When you became a British subject again, Mr. Holland, did you have to go through some formalities? A. Yes.

Q. You went through them, did you? A. Yes.

THE ATTORNEY-GENERAL: No questions.

EDWIN QUENTIN JOYCE, Sworn.

Examined by MR. SLADE.

Q. Is your name Edwin Quentin Joyce? A. Yes.

Q. Do you live at 86 Underhill Road, East Dulwich? A. Yes.

Q. Are you a Civil Servant? A. Yes.

Q. Are you the third son of Michael Francis Joyce? A. Yes.

Q. And Gertrude Emily Joyce? A. Yes, that is correct.

Q. Was your mother's maiden name Brooke? A. Yes, that is so.

MR. JUSTICE TUCKER: Michael Francis Joyce and Gertrude Emily Brooke: is that it? A. Yes, my Lord.

MR. SLADE: Your mother's maiden name was Gertrude Emily Brooke? A. Yes.

Q. Were you born in Galway, Ireland, on the 28th August, 1917? A. Yes, that is correct.

Q. Do you see the prisoner in the dock? A. Yes.

Q. What relation is he to you, if any? A. He is my eldest brother.

Q. What child of the marriage were you, second, third, fourth or what? A. I was the third child of the marriage.

Q. Who is the second child of the marriage? A. The second child of the marriage was my elder brother Francis Martin Joyce.

Q. How many more children were there besides the three you have mentioned? A. I have a younger brother and a younger sister.

Q. We had better have their names? A. My sister is the elder, Gertrude Joan Brooke Joyce, and my younger brother is Robert Patrick Joyce.

Q. Is your sister still alive? A. Yes, my sister is still alive.

Q. Are your two brothers also alive? A. Yes, they are both alive.



Q. Did your father ever have any conversation with you with regard to his nationality? A. Yes, he mentioned that upon a number of occasions.

Q. What did he say to you about it. First of all, what did he tell you, if anything, that his nationality was?

THE ATTORNEY-GENERAL: I must formally object again to this, my Lord.

MR. JUSTICE TUCKER: Well, Mr. Slade, I think that the nationality under which a man passes is a different thing from specific statements made by a man. I think it is some evidence which is admissible in a case of this kind to say that a man was generally recognised or taken to be a citizen of a certain country, but where there is an issue of this kind I think statements made by the father of the man to this witness is on a different basis, and I do not think it is strictly admissible.

MR. SLADE: I can give your Lordship my authority, but I do not desire to press it; I would not have put the question if it had not been supported by the authorities.

MR. JUSTICE TUCKER: No.

MR. SLADE: The case I have in mind is *Re Perton*, 1885, 53 *Law Times*, page 707. There is another authority which is helpful; that is the *Tipperary Case*, 1875, 3 *O'Malley & Hardcastle*, at page 19. The way I make my submission is this. There are two kinds of declarations by a deceased person which are admissible (we already have evidence that Michael Joyce is deceased): declarations against financial interests—I do not suggest that that is this—and declarations against proprietary interests. The authority in *re Perton* is the authority for the proposition that an admission in regard to status is an admission against one proprietary interest in this way: only a British subject is entitled to the franchise, only a British subject is entitled to become a member of the House of Commons, and so on, and to make a declaration that you are no longer a British subject is a declaration against proprietary interests.

I have not got in *re Perton* here, but I remember the facts, and shortly they were these. In that case, which in a sense may be termed a pedigree case, the question turned upon whether a deceased person was legitimate or illegitimate. The Crown were claiming the estate upon the footing that the deceased person was illegitimate, and the Crown put in evidence which was not objected to, which was admitted, containing a declaration by the deceased person himself that he was illegitimate.

The case is reported in 53 *Law Times Reports*. It was admitted on two grounds: firstly, that it was a pedigree case and it was admissible on that ground, and the learned Judge also said that he thought it was admissible as being against interest. The case is also cited in the 11th Edition of *Taylor on Evidence*, volume 1, page 461, as authority for the statement that admissions against status are declarations against interest. It doesn't matter whether the declaration is oral or in writing.

MR. JUSTICE TUCKER: What do you say, Mr. Attorney?

THE ATTORNEY-GENERAL: My Lord, the rule in pedigree cases is, of course, a well-known one, but there is a great distinction, in my submission, between pedigree cases and in cases concerning nationality. I have not had the opportunity of seeing the case to which my learned friend referred, but there is a passage in *Archbold* at page 425 which is not uninteresting in this connection.

MR. JUSTICE TUCKER: Under the heading of what?

THE ATTORNEY-GENERAL: "Private Documents." My learned friend has said there is no distinction in principle between oral evidence and evidence of documents in these cases. "In pedigree cases an entry in a family Bible,

an examined copy of an inscription on a tombstone, a pedigree hung up in a family mansion, and the like, are admissible in evidence; but there does not appear to be any authority extending this principle to criminal cases."

MR. JUSTICE TUCKER: This is not dealing with a declaration made against his interest, is it?

THE ATTORNEY-GENERAL: No, my Lord.

MR. JUSTICE TUCKER: The question is whether the rule about declaration against interest is peculiar to any one class, or whether it is common to criminal cases as well.

THE ATTORNEY-GENERAL: In my submission, if it exists at all, it stands on the same basis as the declaration as to pedigree; it has never been extended to a criminal case.

MR. JUSTICE TUCKER: If I am asked to rule upon this I shall want some assistance, Mr. Attorney; I cannot deal with this satisfactorily on the rather meagre material I have got before me at the moment.

THE ATTORNEY-GENERAL: My Lord, it will be interesting to see the cases.

MR. JUSTICE TUCKER: I must see the cases if the Defence persist in it.

MR. SLADE: My Lord, the fault is entirely mine; I have brought so many books; it is to be found in *Times Law Reports*.

MR. JUSTICE TUCKER: Mr. Slade, would it be convenient for you to call any other witness and defer this?

MR. SLADE: I will defer that question altogether; I will pass away from that matter altogether. (*To the witness*) Mr. Edwin Joyce, in 1923 did your family remove from Lancashire to Allison Grove, West Dulwich? A. Yes, that is correct.

Q. In September 1940 was your house almost completely destroyed by enemy action? A. Yes, it was.

Q. I believe there was saved a trunk, some furniture and one or two small boxes? A. Yes, sir, that is correct.

Q. When did your father die? A. My father died in February 1941.

Q. Do you happen to remember the date of the month? A. The 19th.

Q. Did he die at 86, Underhill Road? A. Yes.

Q. Is your mother alive or dead? A. My mother died last year.

Q. Can you give my Lord and the jury the date when your mother died? A. Yes, it was the 15th September, 1944.

Q. Have you been through all the papers, including the papers mentioned in the property that was saved, all your father's papers? A. Yes, I have been through all my father's effects.

Q. You have, I believe, been able to find nothing dealing with the question of his nationality? A. No, nothing at all.

Q. Do you remember an incident some years ago when certain documents were destroyed? A. Yes, I do.

Q. About how long was that? A. To the best of my recollection, about eleven years ago.

Q. Who destroyed them? A. My father destroyed them.

Q. Just say yes or no to this question. Did your father tell you or give you the reason why he was destroying them? A. He did.

Q. Did you see him burn any of the papers? A. I saw him burn a number of papers.

Q. Did you notice anything about any of the papers that you saw him burn? A. Yes, I did notice one thing.

Q. Was that one of them that was destroyed by burning? A. I believe it was destroyed, yes; it was amongst those that he was preparing for destruction.

- Q. What did you observe about it? A. It had an American Eagle embossed on it, and I believe also there was a seal, a sort of red seal towards the bottom of the sheet.
- Q. From amongst the papers you found do you produce a copy of a marriage certificate? A. I did, yes.
- MR. JUSTICE TUCKER: You say "amongst the papers I found." Tell us when? A. When I was hunting for papers in connection with my father's nationality.
- Q. How long ago was that? A. Just after proceedings were instituted at Bow Street.
- MR. SLADE: Will you look at this document and tell my Lord and the jury whether that is the document you found? A. Yes, that is the document I found amongst his effects.
- Q. To whom does that marriage certificate relate? A. It relates to my father and mother.
- Q. Your father's name according to the certificate is Michael F. Joyce, or Michael Francis Joyce, is it not? A. Yes, that is so.
- MR. JUSTICE TUCKER: "Michael F. Joyce" it is.
- MR. SLADE: Did your father always sign his name "Michael F. Joyce," or in some other way? A. In some other way I have seen his name signed.
- Q. How would he sign it when he did not sign it "Michael F. Joyce?" A. "Michael Joyce" or "M. F. Joyce."
- Q. In addition to that document I want you to produce some more documents that you found, if you will. One is the tenancy agreement. Would you mind looking at this document and telling me whether that is a document that you found amongst your father's papers? A. Yes, this is one of the documents I found.
- Q. In whose handwriting is the signature "Michael F. Joyce" to that document? A. My father's handwriting.
- Q. Is "Michael F. Joyce," the signature, the only part of that document which is in your father's handwriting? A. Might I have a look at it again to make sure? Yes, that is the only part of it that I recognise as being his handwriting.
- Q. May I have the will? Would you mind looking at that Will; was that another document that you found amongst your father's papers? A. Yes, that was another document.
- Q. Was that found when your father died in 1941? A. No, it was not found at that time.
- Q. I suppose your mother must have taken out the Letters of Administration and got the probate? A. Yes, she did that. Might I perhaps add—
- Q. Tell my Lord and the jury what, if any, portions of that document are in your father's handwriting. Perhaps the easiest way to do it would be to leave out the signatures of the two attesting witnesses for the moment. Apart from the signatures of the two attesting witnesses, in whose handwriting is the remainder of the document? A. My father's handwriting.
- Q. All of it except the signatures of the two attesting witnesses? A. Except the signature of the two attesting witnesses.
- Q. Will you look at this paid cheque? In whose handwriting is the signature on the body of the cheque apart from the print? A. My father's handwriting, sir.
- Q. Is that a cheque made payable to your brother, William Joyce? A. Yes that is so.
- MR. JUSTICE TUCKER: What is the date?
- MR. SLADE: 26th April, 1923. (*To the witness.*) Is that right? A. Yes, that is correct.

Q. The documents show it, but, so that the jury may know, the tenancy agreement was dated the 10th July, 1910; the Will was dated 23rd April, 1917, and the one you have in your hand, the cheque, is the 26th April, 1923? A. Yes.

Q. Is this an L.C.C. Education Form dated 20th November, 1935? A. Yes.

MR. JUSTICE TUCKER: What is the date?

MR. SLADE: 20th November, 1935.

MR. JUSTICE TUCKER: Where does that come from? A. From the London County Council.

Q. Where did you find it? A. I have found it amongst those old effects of my father in one of the tin boxes.

MR. SLADE: That refers to your sister, Gertrude Joan Brooke Joyce? A. Yes.

Q. Would you mind telling my Lord and the jury what portion, if any, of that document is in your father's handwriting? A. With the exception of the signature of the witness and the address and the occupation of the witness, the rest of that is my father's handwriting.

Q. Do you also produce a letter purporting to be addressed by your father to you, commencing, "Dear Quentin," and signed "Father." Tell me in whose handwriting that letter is? A. This letter is my father's handwriting.

Q. What is the date of it? A. 13th March, 1940.

Q. Can I have the entries in the Civil Register? Would you mind looking at that document; have you ever seen it before or not? A. Yes, I have seen this before.

Q. Look carefully at the handwriting on the left-hand side. Whose handwriting is that? A. That is my father's handwriting.

Q. The left-hand side sets out the particulars of the bridegroom to a marriage celebrated on the 2nd May, 1905? A. Yes, that is correct.

Q. We have already had the right-hand side identified as the handwriting of your mother. A. Yes.

MR. SLADE: My Lord, that concludes all the evidence in chief on the subject I mentioned. Perhaps I may take *Perton's case* shortly. The headnote says: "*Evidence—Illegitimacy—Declarations of deceased person whose legitimacy is questioned—Family Tradition—Admissibility.*"

MR. JUSTICE TUCKER: I will follow it as you read it.

MR. SLADE: Perhaps the Attorney-General will follow it also.

"*P. died intestate, and the Crown claimed his property on the ground that he was also illegitimate. The evidence which it relied on to prove illegitimacy were (1) declarations made and letters written by P. whilst alive asserting his own illegitimacy; (2) absence of proof that the man whom P's next of kin asserted to be P's legitimate father was alive at the date of P's conception; (3) family tradition.*"—I don't think I need trouble your Lordship with that. I will try to find the passage in the long Judgment which deals, not with the pedigree point, but with the declaration against interest. I see a passage here, the last line but one on page 709, this is from the Judgment of Mr. Justice Chitty: "*Another ground which occurs to me for admitting the evidence is that the declaration is against the proprietary and pecuniary interest of the person who makes it. If a man is seen cutting a tree, that is considered to be some evidence of ownership, and the statements he makes at the time are admissible in evidence of course as against him and those who claim under him. The basis on which the declarations of deceased persons against their interest are admitted is the great probability of truthfulness. It is considered to be most improbable that a man would not tell the truth in a matter of that kind. That is only a practical rule; it is not an absolute guarantee of truth, because cases have been known where a declaration*

against pecuniary interest has been made with a sinister purpose. When the sinister purpose is established in evidence, then, of course, the declaration, though against interest, falls to the ground; but, still, the existence of this interest is considered to be a sufficient general guarantee of the truthfulness of the statement. Now, to my mind, every man has a strong *prima facie* interest in maintaining his own legitimacy—of avoiding that kind of stigma which society attaches to a man, more or less justly or unjustly, because he is illegitimate. Cases no doubt have occurred in which a man has preferred to be thought the illegitimate son of a profligate nobleman rather than the son of an honest tradesman. Such cases are rare, and, to my mind, are not sufficient to form a general line for action. The declaration of the deceased person in regard to his legitimacy or illegitimacy is one which relates to his status and to his rights." Here we are dealing with status.

MR. JUSTICE TUCKER: That was in fact a pedigree case, was it not?

MR. SLADE: It was a pedigree case, my Lord, and the learned Judge puts his decision upon both grounds. I think in the *Times Law Reports* it says there was also another ground. Both were cases of interest; one was legitimacy, and now we are dealing with nationality, and in my respectful submission most people in this country would consider it very much against their interest to admit they had lost their British nationality; it would deprive them of a number of privileges, and in my submission it would be a declaration against proprietary interest.

MR. JUSTICE TUCKER: What do you say on that, Mr. Attorney?

THE ATTORNEY-GENERAL: That it is against interest I am not for a moment disputing. The question in this case in my submission is, first of all, whether declarations against interest are admissible in criminal cases, and, secondly, whether this is a declaration against interest in fact. As to the first point, may I refer your Lordship to a passage in *Roscoe's Criminal Evidence*. I have the 15th edition at page 28. There, towards the bottom of the page, are set out the numerous exceptions—I think there are at least eight of them—to the ordinary hearsay rules; declarations against interest is one of those eight. Then in the following paragraph there is a reference to the first five of those heads, which includes the declaration against interest, and it says: "*Evidence under these heads seems to be unknown in criminal cases.*" I would say frankly and at once that without some considerable research into the cases I should not like to argue that such declarations were not of themselves admissible in criminal cases, but one would have to see what justification there was for the rule that appears to be here suggested, that what was admissible in a civil case would not be admissible in a criminal case.

I put my objection for the moment on the ground that this is not a declaration against interest; and I would like to adopt the objections which my learned friend made yesterday to the admission of oral evidence in regard to these matters. Those objections, if well founded, would appear to be equally applicable to a declaration of a deceased person in regard to the same matter. Is a declaration as to nationality a declaration against interest? I am bound to say it comes a little surprisingly from the Defence in this case to say that a declaration of a man that he is not of British nationality is a declaration against his interest; it may be a declaration against certain interests and not against others. A declaration that a man is not a British subject may deprive him of certain British rights, but it may entitle him to other rights which would accrue to him under the nationality which he professes.

I ask your Lordship to say this is not a declaration against interest in law.

MR. JUSTICE TUCKER: I shall not exclude this evidence.

MR. SLADE (*to the witness*): Mr. Joyce, did your father at any time discuss his nationality with you? A. Yes, sir; he did so on a number of occasions.

Q. Did he say what his nationality was? A. Yes, he told me that.

Q. What did he say his nationality was? A. He said that he was American.

Q. May I get a few dates. You told us you were born in 1917? A. Yes, that is correct.

Q. Can you give us some sort of idea of the years or period of years with reference to your own age when he discussed his nationality with you?

A. I should say when I was about ten years old I was first conscious of his having mentioned that, between ten and eleven; and then on other occasions after that time. That is the earliest I can recall.

Q. The first occasion was when you were about ten years old? A. Yes, when I was about ten.

Q. And thereafter, as you have told us, on a number of occasions? A. Yes.

Q. On other occasions did he tell you he was American? A. In a general way, yes.

Q. On other occasions when he spoke about his nationality? A. Yes.

Q. Did he say anything when he told you he was American? A. Yes, he did.

Q. What did he say to you? A. He told me not to talk about the matter outside as it might not be to his interest if the facts were made generally known.

Q. A Mrs. Holland, whom I was hoping to call, is ill, so I will put these two postcards to you. Will you look at these two postcards and tell my Lord and the jury whether you identify the handwriting? A. Yes, sir, I identify this handwriting.

Q. In whose handwriting are they? A. This is the handwriting of my mother.

Q. Are they addressed by your mother? A. One is addressed to Mrs. Frank Holland, 1019 Boston Road, New York City, and the other one is addressed to Mrs. Emily Holland at 1019 Boston Road, New York City.

Q. Can you see the postmark? A. The postmark on the latter is Brooklyn, New York, as far as I can see, July, 2.30 p.m. The postmark is partly obliterated.

Q. The postcards themselves do not happen to be dated on the other side, do they? A. I am afraid I cannot see any address here. On the other one addressed to Mrs. Frank Holland, it is dated 15th October, 12.30 a.m., 1907, and it is postmarked Brooklyn, New York.

THE ATTORNEY-GENERAL: No questions.

MR. JUSTICE TUCKER: Mr. Slade, I am sure it is unnecessary for me to draw your attention to the fact that there has been no questioning of the two last witnesses.

MR. SLADE: I fully appreciate that, my Lord, and I had it in mind when I put those two postcards in, but there was one reason for doing so.

JOHN WOODMANSEY, *Sworn.*

*Examined by* MR. CURTIS-BENNETT

Q. What is your full name? A. John Woodmansey.

Q. What are you? Are you a Detective Superintendent in the Lancashire Constabulary? A. That is so.

Q. At Hutton, near Preston? A. Yes.

Q. Are you in the Chief Constable's Office. A. Yes.

- Q. Do you produce the correspondence—it is all in one, correspondence, records, reports and Aliens Register—relative to the registration of Michael Joyce and Gertrude Emily Joyce as aliens here in 1917? A. That is correct, sir.
- Q. Perhaps we can go through them together. Do they begin with a File No. A.L.140. County Police Office. Rochdale, 7th May, 1917"? A. That is so, yes.
- Q. "From Acting Superintendent at Rochdale to Chief Constable. Aliens Identity Book. Gertrude Emily Joyce, Serial No. 10273." A. Yes.
- Q. Have you got the Identity Book? A. No, sir.
- Q. Is that an extract from it? A. Yes.
- Q. Does it read like this: "Gertrude Emily Joyce, an American, residing at 31 Manchester Road, Shaw, applies for an identity book. Joyce came to this country on 26th April, 1917, along with her husband for the purpose of proving a will and intends to return to America on or about the 11th instant. She is unable to produce any documentary evidence as to her nationality. One shilling, cost of identity book, received"; and that is signed by an official. A. J. T. Clarke.
- Q. Followed by a document dated the 8th of May, 1917? A. Yes.
- Q. "From the Chief Constable to Superintendent at Rochdale. Identity Book, Gertrude E. Joyce. As the above-named proposes to leave the country on or about the 11th instant C.C."—What does that mean? A. That means "Chief Constable."
- Q. "Does not propose to issue an identity book to alien as it will probably not be required be her" A. It is "by her," sir.
- Q. The next document is the 25th of June, 1917: "From Superintendent at Rochdale to Chief Constable. Alien, Gertrude Emily Joyce. Serial No. 10273. Gertrude Emily Joyce, American, who has been staying at 31 Manchester Road, Shaw, since 26th April, 1917, left this district on 8th June, 1917, to go to 1 Rutledge, Rockbarton, Galway, Ireland, without notifying the police. (Signed) R. Jump. Superintendent." A. Yes.
- Q. Then from the Register of Aliens dated the 25th of June, 1917, there is the following extract with regard to "Joyce, Gertrude Emily. Serial No. 10273."
- MR. JUSTICE TUCKER: What is the date of the entry in the register?
- MR. CURTIS-BENNETT: 25th of June, 1917.
- THE WITNESS: No, sir, it is the 28th of April, 1917, in the register.
- MR. JUSTICE TUCKER: What is the entry? Read it out. A. The first one is Michael.
- MR. JUSTICE TUCKER: You ask the question, Mr. Curtis-Bennett.
- MR. CURTIS-BENNETT: I have got "Surname: Joyce. Christian names: Gertrude Emily." A. Yes.
- Q. "Nationality and birthplace: American"—birthplace "Crompton, Lancashire." A. That is right, American by marriage.
- MR. JUSTICE TUCKER: Are you reading the 28th of April, 1917, from the register? A. Yes.
- Q. Read it out. A. "Serial No. 10273. Date of entry 28.4.17. Joyce." The first entry is "Michael."
- Q. Yes. A. "Nationality: American. Birthplace: Galway, Ireland. Postal address: 31 Manchester Road, Shaw. Occupation: Nil. Date of birth: 6th December, 1866."
- Q. What is the second? Is that all the first entry? A. Then it goes on to say "Particulars of family."
- MR. CURTIS-BENNETT: Continue from No. 9 "Particulars of family." A. "Wife: Gertrude E. Son: William, born 24.4.06. Daughter: Frances, 29.6.12. Date of arrival in district: 26th April, 1917, from Galway

Ireland. Remarks column: Visiting Shaw to settle probate of will, then returning to Ireland," and in the column 12, "Signature of alien"—there is no signature, but it is marked off "To Ireland 15.5.17." The second item is "10273 (serial number). Joyce, Gertrude Emily. American by marriage. Birthplace: Crompton, Lancs. Postal address: 31 Manchester Road, Shaw. Occupation: nil. Date of birth: 28th August"—the original entry was 1887, and it has been crossed out and made 1879. "Particulars of family: Husband," and then it is marked off 10272. "Date of arrival in district and previous place of residence: 26th April, 17. Galway, Ireland." And later on Mrs. Joyce apparently returned to this country again and later returned to Galway, Ireland, on the 11th August, 1919.

- Q. It looks like a mistake in the register: the daughter Frances is spelt F-r-a-n-c-i-s. A. Yes, I have no personal knowledge of it.
- Q. It looks as if it ought to be a son? A. Yes, it does; it is spelt the wrong way. The person who made these entries is not at the moment available.
- Q. Have you got there what is said to be "Change Report"? A. Yes.
- Q. Is that dated the 25th of June, 1917? A. Yes, that's right.
- Q. "Surname: Joyce, Gertrude Emily. Nationality and birthplace: American. Birthplace: Crompton, Lancashire. Postal address: 31 Manchester Road, Shaw. Particulars of family: Husband, serial No. 10272. Date of arrival in district and previous place of residence: 26th April, 17. Rutledge, Rockbarton, Galway, Ireland. Arrived in England: 26.4.17. Remarks: Change permanent. Date of departure or change: Left on 8.6.17. New address or destination: 1 Rutledge, Rockbarton." A. That is right.
- Q. Followed by a letter from the Lancashire Constabulary, dated next day: From the Chief Constable of Lancashire to the Inspector General, Royal Irish Constabulary, The Castle, Dublin. Alien: G. E. Joyce. Sir, I enclose herewith form A.R.D., Change Report, in respect of the above-named alien who removed from Shaw to Rockbarton on the 8th instant without notifying the police of her intended change of address. I should be glad to know whether this alien has reported her arrival in your area to the police at Rockbarton, and if so will you kindly cause her to be interviewed and ascertain what explanation she has to give for failing to notify the police at Shaw of her intended change of address and inform me of the result. I am, sir, your obedient servant." A. That is correct.
- Q. Is that followed by a letter the date of which is not plain to me. Will you read it? A. It is from the "County of Galway, W.R. County Inspector's Office, Galway, 28th June, 1917. Alien: G. E. Joyce. For report."
- Q. And then there is a report reading like this: "I beg to report that Mrs. Gertrude Emily Joyce is the wife of Michael F. Joyce of No. 1 Rutledge Terrace, Salthill, one of the most respectable, law-abiding and loyal men in this locality and one who has been consistently an advocate of the "pro-allied" cause since the beginning of the war. He returned from the United States to Ballinrobe, Co. Mayo, in October, 1909, and Mrs. Joyce his wife also went there on 2.11.1909, where they remained until May, 1913, when they came to reside at Salthill where they have extensive house property. Mrs. Joyce was born an Englishwoman at 31 Manchester Road, Shaw, Lancashire, and went to the States to marry her husband. She states he was only three or four years there altogether and she regrets very much not having reported her departure to the police at Shaw and says that as her husband had reported himself and told her the matter was all right, she did not think a personal report was necessary." Then,



“(A) Neither Michael F. Joyce, her husband, nor herself consider themselves aliens. The former asserts that he has abandoned his claim as a citizen of U.S.A. by failing to get himself registered there within two years after leaving the country for Ireland. They were not considered as aliens here and have not been registered as such. (Signed) Bernard Reilly,” followed by a note “Where was Michael Joyce born? If in Ireland did he take out naturalisation papers in the U.S.A.?” “Sergeant Reilly. Salthill, 2.7.17. I beg to report that Joyce was born at Ballinrobe, Co. Mayo. He emigrated to United States of America and took out naturalisation papers there. He left the United States in October, 1909, and has resided in the Counties of Mayo and Galway, W.R. ever since.”

And then there is a further note: “Submitted, 3rd July, 1917. Please see (A). Under the circumstances there seems some doubt whether these people are aliens at all.” And then over the page in my copy, 6th July, 1917, there is a letter “From the Chief Constable of Lancashire to the Inspector General, Royal Irish Constabulary, The Castle, Dublin. Alien Gertrude E. Joyce. Sir, I am much obliged for your report No. 8656 of the 5th instant. In view of the fact that Mr. Joyce was admitted to American nationality and has not been readmitted to British nationality I must treat his wife as an American subject. I should be much obliged if you would kindly cause Mrs. Joyce to be cautioned for the offence she has committed against the provisions of the Aliens Restriction Order.” That would be for not reporting her address as an alien? A. That is correct.

- Q. Then the matter closes with “I beg to report having cautioned Mrs. Joyce accordingly on this date,” namely, 8th July, 1917, “(Signed) Bernard Reilly.” A. That is correct, sir.
- Q. I think the other letter on the file is—— A. That was sent in a report from the Chief Constable to the local Superintendent for him to note.

THE ATTORNEY-GENERAL: No questions.

BERNARD REILLY, *Sworn.*

*Examined by MR. CURTIS-BENNETT.*

- Q. Is your name Bernard Reilly? A. Yes.
- Q. Do you live at 73 Almonds Green, West Derby, Liverpool? A. Yes, sir.
- Q. Are you a retired police officer? A. Yes.
- Q. Do you remember a person called Michael Joyce? A. Yes, I do remember him well.
- Q. Do you remember the circumstances of certain reports which you made in the year 1917? A. Yes, I do.
- Q. At that time were you a sergeant in the Royal Irish Constabulary stationed at Salthill, which is about a mile outside Galway? A. Yes, that is correct.
- Q. Was Michael Joyce living then at 1 Rutledge Terrace, Salthill? A. Yes, he was living there.
- Q. With his wife? A. With his wife and his son, the prisoner.
- Q. I was going to ask you that—with his wife and his son the prisoner?
- MR. JUSTICE TUCKER: Where was he living? A. No. 1 Rutledge Terrace.
- Q. Rutledge Terrace—where? A. Salthill.
- MR. CURTIS-BENNETT: Did you visit Michael Joyce for the purpose of finding out matters you wanted to know for your report? A. Yes.
- Q. And speak to him? A. Yes, I spoke to him and his wife.
- Q. When speaking to Michael Joyce did the question of his nationality arise at all? A. Yes.

- Q. Don't answer this question until you are told you may. Did he tell you what his nationality was? A. He told me he thought at that time that his nationality was British, but that he had taken out citizenship papers in the United States, but that he thought he had abandoned the claim as a citizen on account of not having, after a lapse of two years, got registered in the United States again as a citizen.
- Q. He had taken out naturalisation papers in the United States, but he had lost that nationality by the lapse of time? A. Yes.
- Q. In not having asked to be re-registered? A. Yes.
- THE ATTORNEY-GENERAL: No questions.

WILLIAM YUILE FORBES, *Sworn.*

*Examined by MR. SLADE.*

- Q. Mr. William Yuile Forbes, do you live at 71 Dee Banks, Chester? A. Yes.
- Q. Do you carry on the profession of an examiner of questioned documents? A. Yes.
- Q. I think at 109 Kingsway, London, Liverpool, Glasgow and Edinburgh. Is that right? A. Yes.
- Q. Have you been employed in that capacity for some twenty years? A. Yes.
- Q. Have you been employed by departments of His Majesty's Government? A. Yes.
- Q. The police? A. Yes.
- Q. Banks and insurance companies? A. Yes.
- Q. And the American Government? A. Yes.
- Q. I want you to take, if you wouldn't mind, various documents. I will have them handed to you one at a time. Take that one. Does it purport to be an original will dated the 23rd April, 1907? A. Yes.
- Q. And now is this a Royal Irish Constabulary form? A. Yes.
- Q. Dated in the year 1910? A. Yes.
- Q. And an original London County Council form dated the 20th of November, 1935? A. Yes.
- Q. And an original cheque dated the 26th April, 1923? A. Yes.
- Q. And an original letter signed "Father" dated the 13th March, 1940? A. Yes.
- Q. Now I want you to look at a certificate dated 1945. There is no trouble about that, of course, a declaration of intention, and another certificate and then a photostat of a petition. A. Yes.
- MR. JUSTICE TUCKER: This is what you call the naturalisation record, I think.
- MR. SLADE: Yes, my Lord. (*To the witness.*) On the petition, Mr. Forbes, the name Michael Joyce appears four times, does it not? A. Yes.
- Q. Have you carefully and microscopically examined the five documents that I have just handed to you with the signature "Michael Joyce" where it appears for the second and fourth times on the petition? A. Yes.
- Q. Have you made a number of enlargements? A. I have.
- Q. Will you produce them—have you got them there with you? A. Yes.
- Q. You may take it that it is not challenged by the Prosecution that those documents, or the relevant portions of them, the signatures, are in the prisoner's father, Michael Joyce's handwriting. A. Yes.
- Q. In your opinion in whose handwriting are the signatures "Michael Joyce" where they appear for the second and fourth times in the petition on the naturalisation record? A. The same handwriting.
- Q. Have you any professional doubt about that whatever? A. None.
- Q. Of course, the naturalisation record petition is dated with the year 1894? A. Yes.
- Q. The earliest of the documents that I have just put before you is 1910, is it not? A. Yes, the Constabulary—

- Q. So that the shortest distance in fact was sixteen years between 1894 and 1910? A. Yes.
- Q. To take it a step further, assuming for one moment that Michael Joyce was born in 1870 he would be twenty-nine in 1899 and forty in 1910? A. Yes.
- Q. Would you expect to find some change in the handwriting of a man in 1894 as compared with 1910? A. Yes.
- Q. Have you taken note of that fact and made allowance for those changes? A. Yes.
- Q. I will leave it with this examination in chief. If the Prosecution desire to know the reasons in detail which have led you to form your opinion, you can give them to them? A. Yes.

THE ATTORNEY-GENERAL: No questions.

MR. SLADE: Thank you, Mr. Forbes. (*To the Judge*) Mr. Stebbings, your Lordship will hear, is entitled to diplomatic immunity, and is entitled to assist your Lordship on any question.

HENRY ENDICOTT STEBBINGS, *Sworn.*

*Examined by MR. SLADE.*

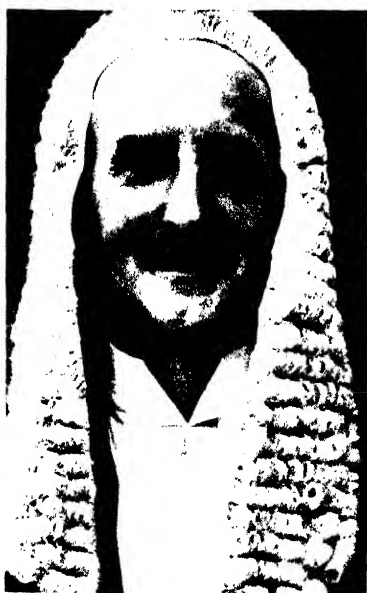
- Q. Is your name Henry Endicott Stebbings, and are you the First Secretary of the American Embassy in London? A. I am.
- Q. Are you also commissioned as constable, being the officer designated by the Ambassador as chief of the Consular Section of the Embassy in London? A. Yes.
- Q. Are you also Supervising Officer for all the other American Consulates in Great Britain and Northern Ireland? A. Yes, I am.
- Q. Have you been a Foreign Service Officer for some fourteen years? A. Yes.
- Q. In the course of your training and duties have you become familiar with the citizenship laws of the United States? A. I have.
- Q. Not only as they are to-day, but as they were in 1894, for example? A. Yes.
- Q. Perhaps, Mr. Stebbings, you would be good enough to look at what we call the naturalisation record. I think you have been good enough to look at these or copies of these documents before? A. Yes, I have seen copies of them.
- Q. And you have seen the declaration of intention? A. Yes.
- Q. And also the petition? A. Yes.
- Q. The petition consists, among other things, of an oath taken in open Court by Michael Joyce on the 25th October, 1894? A. Yes.
- Q. And certified, so to speak, by Citizen of the United States John Duane, also sworn in open Court on the same date? A. Yes.
- Q. According to the law of the United States of America what effect had the swearing of that oath by Michael Joyce and the swearing of that oath by John Duane upon Michael Joyce's nationality? A. It granted him American citizenship.
- Q. Did he thereupon by American law become an American citizen without any further formal order or requirement of any description? A. He did.
- Q. I ask you this in case it should be important. Supposing that this Michael Joyce, the one whoever he is who is referred to in this document, married in New York and a son was born to him, after, of course, he became an American citizen— A. Yes.
- Q. According to American law what would be the nationality of that son? A. An American citizen by birth.
- Q. Even assuming at some subsequent time that the father lost the American nationality which he had acquired in 1894 according to American law, would that have any effect upon the status of the son who was born in America? A. No.



MR. JUSTICE TUCKER



SIR HARTLEY SHAWCROSS



MR. G. O. SLADE



MR. DEREK CURTIS-BENNETT



*[Copyright Reserved]*

JOYCE'S ARRIVAL AT BRITISH SECOND ARMY HEADQUARTERS

THE ATTORNEY-GENERAL: No questions.

MR. SLADE: My Lord, that is the case for the Defence. Would your Lordship be good enough to release the witnesses?

MR. JUSTICE TUCKER: Yes.

MR. SLADE: Some come from a distance and they are very anxious to be released.

MR. JUSTICE TUCKER: Yes, those witnesses who have been called and who have not been cross-examined too, can be released.

MR. SLADE: I also have a number of others whom I have not called. Will your Lordship allow all those to be released.

MR. JUSTICE TUCKER: Yes.

MR. SLADE: That is the case for the Defence, my Lord. Before I address the jury perhaps your Lordship would be good enough to give some indication to us as to what matters there are for the jury to try?

MR. JUSTICE TUCKER: Mr. Attorney, perhaps you would assist me now by saying whether, having heard the evidence which has been adduced by the Defence you are going to invite the jury to come to the conclusion that this man was a British subject or not.

THE ATTORNEY-GENERAL: No, my Lord. I indicated as far as I properly could in opening that I was not going to press that point, and I certainly do not consider it my duty to invite them to say so.

MR. JUSTICE TUCKER: Very well, Mr. Attorney, I think everybody must agree that the evidence which has been tendered is really overwhelming.

THE ATTORNEY-GENERAL: Yes, my Lord.

MR. JUSTICE TUCKER: That leaves us with count 3 as the only effective matter which we have to deal with.

THE ATTORNEY-GENERAL: Yes.

MR. JUSTICE TUCKER: With regard to that, Mr. Attorney, I think it would be perhaps the most convenient course that you should elaborate your submission in regard to that, in order that Mr. Slade may know how to put his case and then he could reply. Would that be convenient to you?

THE ATTORNEY-GENERAL: If your Lordship pleases.

MR. JUSTICE TUCKER: At some time I hope you will be able to give me a little assistance in regard to the nature, history and effect of a passport, as to which I am at the moment somewhat ignorant.

THE ATTORNEY-GENERAL: My Lord, there is very little law on it, but I will tell your Lordship what I have been able to discover about it. I will say at once, I think that the submission I am about to make to your Lordship is not covered by any express authority—it is perhaps none the worse for that. I think it was Baron Parke who said in one of the cases that it is one of the incalculable advantages of our Common Law that it is applicable to new circumstances potentially repeating themselves.

My general submission is that, when one looks to see what the basis of allegiance to the Crown is, one finds that it rests upon the existence of protection by the Crown.

May I first of all refer to two cases which at first sight appear to be against me? It is true of course, as I say, that there is no existing authority upon the matter and that hitherto the allegiance due from an alien to the Crown has to be dealt with under the name of "local allegiance" and has not hitherto been considered in the cases as arising apart from the birth in the case of a natural-born British subject or from residence or from oath in the case of those who have not been natural-born subjects. That in my submission was so until comparatively modern times. It is a little difficult to say exactly when, but until comparatively modern times the passport system had not come into being at all and the Crown was not in general able to vouch for its citizens or for those whom it was protecting once they had left Crown territory. Once a person entitled to protection

had left the territory over which the Crown had jurisdiction he had to prove his right to protection *ad hoc* and he had no documentary evidence which he could carry with him which formed in itself a certificate entitling him to protection as, in my submission, a passport does.

In order to see whether a temporary allegiance which in the cases is often described as local allegiance is based merely on presence within the territory of the Crown or is based on some other and rather wider notion, one has to look at a number of old cases in a number of the old books; and one finds, I think, in all of them, with the exception of the two cases to which I am going to draw your attention, the general proposition expressed that allegiance—whether it be local allegiance or natural allegiance—is based upon protection. You find phrases such as that allegiance and protection are correlative things; that they are reciprocal things; that the one draws the other; and all through the line of authority dealing with the matter you will find allegiance to be on that basis of protection.

The chief case which appears at first sight to be against me is the case of *Johnstone v. Pedlar*, reported in 1921, 2 *Appeal Cases* at page 262. I do not think I need trouble your Lordship with the facts in that case, but it was a case where the question of the right of an alien to sue in tort was under consideration and where the possible defences are discussed at page 292. In the course of the speech by Lord Sumner there is a passage which is against me. Has your Lordship the report?

MR. JUSTICE TUCKER: Yes.

THE ATTORNEY-GENERAL: In the last paragraph it says: "*Personally I do not think that either Lord Coke's language or the maxim to which he refers, Protectio trahit subjectionem et subjectio protectionem, points to such a conclusion. The matter which he had in hand is the contrast between ligeantia localis,<sup>1</sup> which begins no earlier than and continues no longer than the presence of the alien amy within the realm and the lasting allegiance of the subject born. I do not think that Lord Coke conceived of it as quasi-contractual or as involving mutuality.*" That was the passage in *Calvin's case* which seemed to put the thing on the basis of an implied contract, a view as to which there is some other authority, but with which Lord Sumner in this passage disagrees. He goes on to say: "*The principle that the sovereign can refuse the alien permission to enter the realm and that the alien has no right to enter is inconsistent with the existence of any such basis for local ligeance.*" My Lord, I confess it is difficult to see why that is so. One might have said, I would have respectfully submitted, that an alien who chooses to take advantage of the permission of the sovereign to enter the realm, having no right to enter it without such permission, enters it on the acceptance of the obligation to allegiance when he does so. I do not think for the purposes of my case it is necessary to raise the doctrine of allegiance on any kind of implied contract or on any basis of mutuality.

MR. JUSTICE TUCKER: On what basis does Lord Sumner put it then?

THE ATTORNEY-GENERAL: He goes on to say this, my Lord: "*It is clear that the obligation to obey the laws and that civil and criminal liability in case of disobedience to them are not dependent on anything in the nature of an actual grant of protection or recognition of the alien's presence or licence to him to remain and if, his entry having been prohibited, he should contrive to enter surreptitiously and for a time be undetected, I conceive that during that interval he would still be liable to suit or prosecution for his acts done in defiance of the ordinary law.*" He bases it, so far as obedience to the

<sup>1</sup> "Local Allegiance."

ordinary law is concerned, entirely upon presence, known or unknown, within the King's realm and whether or not it carries with it any right to protection.

MR. JUSTICE TUCKER: He is putting it on the basis of presence alone.

THE ATTORNEY-GENERAL: Yes, my Lord.

MR. JUSTICE TUCKER: What does the right to protection mean? I thought that the right to protection of the alien, one of the rights at any rate, he gets is that he is within the King's peace.

THE ATTORNEY-GENERAL: Yes.

MR. JUSTICE TUCKER: Lord Sumner would not object to that proposition.

THE ATTORNEY-GENERAL: He is putting it on the rather stronger basis of contract and saying that, in spite of the fact that the presence of the alien is unknown, he would still be within the general scope of the law. He concedes, I think, and I do not think there is any authority which takes a different view, that the presence of the alien does give rise to a right of protection: whether there is any basis of mutuality about it is another matter.

MR. JUSTICE TUCKER: The relevance of this case is that he does not take the view that there is mutuality and that protection has got nothing to do with it. He puts it on the basis of physical presence only.

THE ATTORNEY-GENERAL: Yes, my Lord. There is perhaps this to be said about it. It does not appear that that matter had been the subject of any argument in the course of the case. There is a passage at the bottom page 277 in Lord Cave's speech: "*I should add that the judgment of the Master of the Rolls O'Connor in the Court of Appeal was mainly founded upon the view that the right of a resident alien to protection is contingent upon his observing the duty of allegiance while in the realm, and that the respondent having been guilty of treasonable acts had thereby forfeited his right to the protection of the King's Courts. But this question was not raised in the Defence and either for that reason or because a decision on the wider question was desired was not seriously argued in your Lordships' House, and accordingly I think it best to express no opinion upon it.*"

Then at page 284 there is a further short passage in the course of the speech of Lord Atkinson relying on *Foster*—I shall refer presently to *Foster*—in which Lord Atkinson says: "*For the same reason an alien enemy can be prosecuted for high treason if he has accepted the protection of the sovereign, but not otherwise.*" Then at page 297, in the third paragraph on that page, there is a short passage in the speech of Lord Phillimore: "*From the moment of his entry into the country the alien owes allegiance to the King till he departs from it and allegiance, subject to a possible qualification which I shall mention, draws with it protection, just as protection draws allegiance.*" So that there seems to have been some considerable difference of view upon this point which had not been argued in the course of the case and it was not necessary for the decision of the case.

MR. SLADE: I wonder if the Attorney-General would mind me pointing out that, if he had read Lord Atkinson's remarks at the top of page 284, your Lordship would see what "the same reason" was by reading the preceding few words.

THE ATTORNEY-GENERAL: I am obliged. "*A friendly alien resident in this country can undoubtedly be prosecuted for high treason*"—he refers to the *De Jager* case—"because it can then be averred that he acted contra ligentiae suae debitum (Calvin's case). *For the same reason an alien enemy can be prosecuted for high treason if he has accepted the protection of the sovereign but not otherwise.*" My Lord, I was going to refer your Lordship to Calvin's case. There the liability of the friendly alien was put on that basis that he had accepted the protection of the sovereign.

MR. JUSTICE TUCKER: Perhaps this would be a convenient moment to adjourn.



(Adjourned for a short time.)

THE ATTORNEY-GENERAL: My Lord, the other case which contains the passage which appears to be against me is the case of the Stepney Election Petition, reported in the 17th volume of the Queen's Bench Division, 1886, at page 54. The point in that case was that persons who were born in Hanover before the accession of Queen Victoria to the throne of the United Kingdom "*and not naturalised are, though resident in the United Kingdom, aliens and not entitled to vote at the election of members of Parliament.*" At page 62 there is a passage half-way down the page after the reference to Calvin's case: "*Blackstone is equally express: 'It is a principle of universal law that the natural-born subject of one prince can not by any act of his own—no, not by swearing allegiance to another—put off or discharge his natural allegiance to the former, for this natural allegiance was intrinsic and primitive and antecedent to the other, and cannot be divested without the concurrent act of that prince to whom it was first due. Indeed the natural born subject of one prince to whom he owes allegiance may be entangled by subjecting himself absolutely to another, but it is his own act that brings him into these straits and difficulties of owing service to two masters, and it is unreasonable that by such voluntary act of his own he should be able at pleasure to unloose those bands by which he is connected to his natural prince.'*" And then he gives a reference to Blackstone, and he remarks that down to the time of the Revolution of 1688 for six hundred years the oath whenever administered was 'to be faithful to the king and his heirs.' "*Now the natural prince of a Hanoverian state not naturalised in any other country is undoubtedly the King of Hanover or the sovereign who now by conquest represents that king, i.e. the German Emperor. It is not suggested, that either the King or the Emperor ever relinquished their claim to the allegiance of these subjects: that allegiance therefore remains. Thirdly, the inconveniences that would follow from this claim to elect at the will of the subject were pointed out in the argument, and they are, as far as an argument ab inconvenienti ever can be, practically conclusive. If the Queen of these islands and the German Emperor were to go to war (absit omen, as the judges said in Calvin's case, but it has been and may be so again) any one of these resident non-naturalised Hanoverians would undoubtedly, if serving in the British army and taken prisoner, be liable to be shot as a traitor in arms against his sovereign and the case would be the same with an Englishman, and there must be many such, residing in Hanover, not naturalised and serving in the German armies. The instance of Aeneas Macdonald shows, though under a somewhat different head of law, that such a case is by no means imaginary.*"

Now, my Lord, I come to the case which appears to be against me: "*But that a man rightfully and legally in the allegiance of one sovereign could be also rightfully and legally treated as a traitor by another cannot be the law. Yet it follows inevitably from Mr. Charles's premises when the essential character of allegiance is understood. Sir. William Blackstone, in the passage already cited, gives such a man small consolation. 'The natural-born subject of one prince to whom he owes allegiance may be entangled by subjecting himself absolutely to another, but it is his own act which brings him into these straits and difficulties of owing service to two masters.'*" Sir William Blackstone plainly had never heard of the doctrine that a man could get rid by election of an allegiance he was born under." My Lord, in my submission that passage if one reads it with some care is clearly not wrong, because it is the undoubted law and has been for many hundreds of years that an alien in this country owing a permanent and natural allegiance to the country of his birth may none the less owe local allegiance, at least while

he is in this country, and could be prosecuted for treason in this country in the doing of something which might indeed have been his duty to do for his own natural sovereign. Possibly the significant words here are the words that Lord Coleridge uses, "*rightfully and legally*," and my submission is that the quotation from Blackstone makes it quite clear that a man may voluntarily place himself under a dual allegiance. Of course, there may be a double nationality giving rise to conflicting claims to allegiance. I do not know what the American law is, but it is the law of some countries that a person born in some countries is a subject of them, although he may be born of a person of a different nationality; he is by the law of that country subject to the laws of nationality of that country. There is in my submission the very well settled case of local allegiance in its strictest sense due from a resident alien. In any event the passage to which I have referred your Lordship there is *obiter*.<sup>1</sup> With that exception, the authorities, as far as they go, are the other way.

The earliest case is *Calvin's Case* which is reported in the 7th volume of *Coke's Reports*. Your Lordship will remember that that case—and I do not propose to examine it in detail at all, unless your Lordship desires it—dealt with the nationality of people born after the accession of King James I to the English throne—people born in Scotland. At page 10 in that report, in paragraph 3, there is a passage on which I rely: "*Concerning the local obedience it is observable that, as there is a local protection on the King's part, so there is a local ligeance on the subject's part.*"

MR. SLADE: Will my learned friend be good enough to give me the reference in the English Reports?

THE ATTORNEY-GENERAL: It is 6a. Then the case refers to a case of Sherley: "*Sherley, a Frenchman, being in amity with the King came into England and joined with divers subjects of this realm in treason against the King and Queen and the indictment concluded contra ligeant' suae debitum, for he owed to the King local obedience, that is, so long as he was within the King's protection, which local obedience being but momentary and uncertain is yet strong enough to make a natural subject, for, if he hath issue here, that issue is a natural-born subject.*" Your Lordship will see that the basis of the allegiance which is due from the alien is the protection which the alien has whilst he is within the realm: "*He owed to the King local obedience, that is, so long as he was within the King's protection.*"

Then, my Lord, one goes on to *Coke's Institutes*, the third volume. In the first chapter at the bottom of page 4 there is a reference to *Calvin's case*, and in the last paragraph on that page it is said: "*And all aliens that are within the realm of England and whose sovereigns are in amity with the King of England are within the protection of the King and do owe a local obedience to the King (are homes within this act) and if they commit high treason against the King, they shall be punished as traitors; but otherwise it is of an enemy, whereof you may read at large.*" My Lord, that reference is in my submission an authority for this proposition, that presence within the territory of the King is not enough. An alien coming into the King's realm, perhaps as a member of enemy forces, perhaps as a spy remaining in this country for some time unknown to the sovereign, is not under a duty of allegiance because he is not receiving the protection of the Crown. It is only in the case of the alien friend who is not only resident in the

<sup>1</sup>"*Obiter dicta*, though they may have great weight as such, are not conclusive authority. . . . If a Judge thinks it desirable to give his opinion on some point which is not necessary for the decision of the case, that of course has not the binding weight of the decision of the case and the reasons for the decision." (Mr. Justice Talbot in *Flower v. Ebbw Vale Steel, Iron and Coal Co., Ltd.*, 1934, 2 K.B. 154.)

country, but is resident here as a protected person, receiving the benefit of the Crown's protection, that you get the corresponding duty of allegiance arising.

As one goes through the old books one finds the same doctrine repeated in the first volume of *Hale's Pleas of the Crown* at page 59, in paragraph 2 at the top of page 58.

MR. JUSTICE TUCKER: What is the chapter?

THE ATTORNEY-GENERAL: It is Chapter ten, under the heading of treason; in paragraph 2 it says: "*Because as the subject hath his protection from the King and his laws, so on the other side the subject is bound by his allegiance to be true and faithful to the King; and hence all indictments of high treason run proditorie, as a breach of the trust that is owing to the King contra ligeantiae suae debitum, against that faith and allegiance he owes to the King and contra,*" and so on, "*and hence it is that, if an alien enemy come into this kingdom hostilely to invade it, if he be taken he shall be dealt with as an enemy, but not as a traitor because he violates no trust nor allegiance. But if an alien, the subject of a foreign prince in amity with the King, live here and enjoy the benefit of the King's protection and commit a treason, he shall be judged and executed as a traitor, for he owes a local allegiance.*" There again, my Lord, the matter is being put, as I submit, on this basis, that something more is required than the tie of mere presence in the King's realm, something tying the person who is to be put under an obligation of allegiance to the King and to the King's laws and to the protection which the King can give; and thus the distinction is drawn between the enemy alien who may be resident in the country for some considerable time but who is not enjoying the King's protection, and an alien who is receiving the benefit of the King's protection. If he enjoy the benefit of the King's protection and commits a treason, then he shall be judged and executed as a traitor.

May I refer your Lordship to *East's Pleas of the Crown*. At page 52 in the first volume of *East* there is a passage to which I invite your Lordship's particular attention because it deals with the case of an alien who is no longer within the King's realm, and it is the first, and I think probably the only, authority for the view that, in spite of the fact that the factor of residence has ceased, the allegiance may continue; and the allegiance is held here to continue because, although residence on the part of the alien himself has gone, there remains a tie between the alien and this country of a kind which is held to be sufficient to continue the duty of allegiance which arose from residence. At the bottom of page 52 your Lordship will see the paragraph: "*Local allegiance is that which is due from a foreigner during his residence here, and is founded in the protection he enjoys for his own person, his family and effects during the time of that residence. This allegiance ceases whenever he withdraws with his family and effects, for his temporary protection being then at an end the duty arising from it also determines. But if he only go abroad himself, leaving his family and effects here under the same protection, the duty still continues, and if he commit treason he may be punished as a traitor, and this whether his own sovereign be at enmity or at peace with ours.*"

My Lord, it is the fact in this case, of course, that the prisoner left his father and mother and some brothers and sisters in this country, but he took his wife away with him when he left this country in August, 1939, for Germany. Whatever may have been the position with regard to the continuance of some family tie, my submission, of course, is that he retained a tie with this country by holding a British passport and retaining the protection of that document.

MR. JUSTICE TUCKER: Was the evidence that, when he applied for the passport, it included his wife as well?

THE ATTORNEY-GENERAL: I think not, but my learned friend will look it up and make quite sure.

MR. JUSTICE TUCKER: Read from where you were reading, Mr. Attorney.

THE ATTORNEY-GENERAL: Yes, my Lord. *"Therefore if he aid even his own countrymen in acts or purposes of hostility while he is resident here, he may be dealt with in the same manner. The above rule was laid down by all the Judges assembled at the Queen's command on the 12th January, 1707."*

MR. JUSTICE TUCKER: That applies, I apprehend, to all that has gone before.

THE ATTORNEY-GENERAL: I apprehend so. I think I shall be able to refer your Lordship to another matter in which that is made quite clear. At the foot of that page there is a passage just before one gets to the last paragraph: *"But an alien enemy not domiciled here taken in avowed hostilities against the King or his government is no traitor though leagued with rebels, for he violates no trust or allegiance. On the trial of several Quakers for their third offence upon the statute 16 Car. 2, an act for suppressing seditious conventicles, one of them pleaded that he was an alien born in France and so not within the penalty of the act which is levelled against every person, etc., 'being a subject of this realm'; but this was overruled because, as long as he lived here under the King's protection, he is a subject of the realm and punishable for transgressing its laws, but it was admitted that if the statute had said 'being a natural-born subject,' etc., it would not have extended to him."*

Then there is a passage in *Foster's Crown Law* at page 185. My learned friend in the course of his submission yesterday drew your Lordship's attention to the fact that in *Woolmington's case* one passage in *Foster* had been overruled, and, although I think my learned friend rather invited your Lordship to take this view, your Lordship may think that the whole of this authority has not been undermined by the House of Lords in the decision in *Woolmington's case* on one part of the matter. On page 185 there is a reference which I indicated when I cited *East* to the decision of the judges in 1707, Section 4. May I start at Section 2?

MR. JUSTICE TUCKER: Yes.

THE ATTORNEY-GENERAL: *"An alien whose sovereign is in amity with the Crown of England residing here and receiving the protection of the law oweth a local allegiance to the Crown during the time of his residence. And if during that time he committeth an offence which in the case of a natural-born subject would amount to treason, he may be dealt with as a traitor. For his person and personal estate are as much under the protection of the law as the natural-born subjects, and, if he is injured in either, he hath the same remedy at law for such injury."* Section 3: *"An alien whose sovereign is at enmity with us, living here under the King's protection and committing offences amounting to treason, may likewise be dealt with as a traitor. For he oweth a temporary local allegiance founded on that share of protection he receiveth."* And then Section 4 reads: *"And if such alien, seeking the protection of the Crown and having a family and effects here, should, during a war with his native country, go thither and there adhere to the King's enemies for purposes of hostility he might be dealt with as a traitor. For he came and settled here under the protection of the Crown, and though his person was removed for a time his effects and family continued still under the same protection. This rule was laid down by all the Judges assembled at the Queen's command 12th January, 1707."*

My Lord, in Section 1 the basis of the thing is, in my submission, that the alien is as much under the protection of the law as the natural-born subject. Equally in the case of the alien who is no longer resident but is travelling abroad on the King's passport, he is equally under the

protection of the Crown in whatever foreign country he may happen to be as a British subject travelling under the same passport. Both have the same passport and both enjoy the same right to protection.

Then there is a passage in the first volume of the *Commentaries* at page 370 which indeed goes a little further than I find it necessary to go myself, although there is some other authority for the view that is here expressed. Blackstone deals with the mutuality of the obligation, the matter to which Lord Sumner referred in the course of his speech, and this is said at page 370: "*Local allegiance is such as is due from an alien or stranger-born for so long time as he continues within the King's dominion and protection, and it ceases the instant such stranger transfers himself from this kingdom to another. Natural allegiance is therefore perpetual, and local temporary only; and that for this reason, evidently founded upon the nature of government, that allegiance is a debt due from the subject, upon an implied contract with the prince, that so long as the one affords protection, so long the other will demean himself faithfully. As therefore the prince is always under a constant tie to protect his natural-born subjects at all times and in all countries, for this reason their allegiance due to him is equally universal and permanent. But on the other hand, as the prince affords his protection to an alien only during his residence in this realm, the allegiance of an alien is confined in point of time to the duration of such his residence and in point of locality to the dominions of the British Empire.*"

My Lord, that statement of the law was no doubt complete at that time. At that time the prince did not and could not afford his protection to an alien once that alien had given up his residence within the realm; consequently the allegiance of the alien was confined to the realm. But in later years, with the development of international law and usage, the prince was able to afford protection to his subjects outside the realm, and he does so in my submission by the issue of a passport: and that passport, whether issued to one who is a natural-born British subject or to one whose position may be one of statelessness—a condition which the law of all countries recognises—or one who is in fact fortuitously an alien, that protection is just the same in the case of each of those several categories of persons. I rely on this passage as an authority for the view that the whole basis of the allegiance is the protection which the sovereign extends to the person who in return owes it.

That view expressed in Blackstone, putting it on the basis of mutuality, on the basis of an implied contract, has been discussed in some of the books. It finds some favour in the books on international law. For instance, in the first volume of *Phillimore's International Law*, at page 454, which your Lordship might allow me to cite, there is this passage: "*With respect to the administration of criminal law, it must be remembered that every individual on entering a foreign territory binds himself by a tacit contract to obey the laws enacted in it for the maintenance of the good order and tranquillity of the realm, and it is manifestly not only the right, but the duty, of a state to protect the order and safety of the society entrusted to its charge against the offences of the foreigner as of the native.*" He puts this as a proposition of international law and goes on to say: "*This proposition, it should be observed, must not be confounded with another, namely, the alleged right or duty of a state to punish a citizen for an offence committed without its territory—this is a proposition of municipal, the other is one of international law.*"

My Lord, then, having cited those authorities for the view that allegiance arises from protection, is reciprocal with protection, is a correlative thing, I turn to an authority for the proposition that allegiance continues, although the right to protection may be in suspense.

There I rely on the case of *De Jager v. the Attorney-General of Natal*, reported in 1907 *Appeal Cases*, page 326. In *Foster* the paragraph I cited to your Lordship is an authority for the same proposition. The matter dealt with in *De Jager's* case was this: "*A resident alien within British territory owes allegiance to the Crown, and if he assists invaders during the absence of state forces for strategical or other reasons he is rightly convicted of high treason. Special leave to appeal from a judgment to that effect refused. There is no sufficient authority for the doctrine that the alien's duty of allegiance ceases if an enemy makes good his military occupation of the district in which the alien resides.*" My Lord, at page 328, in the course of the judgment of the Divisional Committee, the Lord Chancellor, Lord Loreburn, referred to the argument of Sir Robert Finlay, as he then was, and he said: "*Their Lordships are of opinion that there is no ground for this contention*"—that is, the contention, that when the protection ceases, its counterpart ceases—"Their Lordships are of opinion that there is no ground for this contention. The protection of a state does not cease merely because the state forces for strategical or other reasons are temporarily withdrawn, so that the enemy for the time exercises the rights of an army in occupation. On the contrary, when such territory reverts to the control of its rightful sovereign, wrongs done during the foreign occupation are cognisable by the ordinary courts. The protection of the sovereign has not ceased. It is continuous, though the actual redress of what has been done amiss may be necessarily postponed until the enemy forces have been expelled. Their Lordships consider that the duty of a resident alien is so to act that the Crown shall not be harmed by reason of its having admitted him as a resident." One may add as a corollary to that that he shall not be harmed by reason of having been admitted to the protection and to the status of a British passport-holder.

Then Lord Loreburn goes on: "*He is not to take advantage of the hospitality extended to him against the sovereign who extended it. In modern times great numbers of aliens reside in this and in most other countries and in modern usage it is regarded as a hardship if they are compelled to quit, as they rarely are, even in the event of war between their own sovereign and the country where they so reside. It would be intolerable, and must inevitably end in a restriction of the international facilities now universally granted if, as soon as an enemy made good his military occupation of a particular district, those who had till then lived there peacefully as aliens could with impunity take up arms for the invaders. A small invading force might thus be swollen into a considerable army, while the risks of transport (which in the case of overseas expeditions are the main risks of invasion) would be entirely evaded by those who, instead of embarking from their own country, awaited the expedition under the protection of the country against which it was directed.*" My Lord, I do not think the rest of the judgment I need read to your Lordship.

There is an American case which I would like to refer your Lordship to. That is the case of *Carlisle v. the United States*, reported in 16 *Wallace's Reports*, 147, a decision of the American Supreme Court.

MR. JUSTICE TUCKER: What is the date of it?

THE ATTORNEY-GENERAL: 1872. The short point there was that an alien—he was a British subject as a matter of fact, if I recall it rightly—was domiciled in one of the Confederate States, in one of the areas occupied by the Confederate States, during the American Civil War, and he sold saltpetre to be used, as he knew, by the Confederate armies in the making of gunpowder; and it was held that he was guilty of an offence. The American courts seem to have adopted almost exactly the view of the law which had already been expressed in the old English books, and Mr. Justice Field

in the course of his judgment, at page 154, said: "*By allegiance is meant the obligation of fidelity and obedience which the individual owes to the government under which he lives or to his sovereign in return for the protection he receives. It may be an absolute and permanent obligation or it may be a qualified and temporary one. The citizen or subject owes an absolute and permanent allegiance to his government or sovereign or at least until by some open and distinct act he renounces it and becomes a citizen or subject of another government or another sovereign. The alien, while domiciled in the country, owes a local and temporary allegiance which continues during the period of his residence. This obligation of temporary allegiance by an alien resident in a friendly country is everywhere recognised by publicists and statesmen.*"

MR. JUSTICE TUCKER: Read that passage again, will you? From "the alien, while domiciled."

THE ATTORNEY-GENERAL: "*The alien, while domiciled in the country, owes a local and temporary allegiance which continues during the period of his residence. This obligation of temporary allegiance by an alien residing in a friendly country is everywhere recognised by publicists and statesmen. In the case of Thrasher, a citizen of the United States resident in Cuba, who complained of injuries suffered from the government of that island, Mr. Webster, then Secretary of State, made in 1851 a report to the President in answer to a resolution of the House of Representatives in which he said: 'Every foreigner-born, residing in a country, owes to that country allegiance and obedience to its laws so long as he remains in it, as a duty upon him by the mere fact of his residence: and by that temporary protection which he enjoys is as much bound to obey its laws as native subjects or citizens. This is the universal understanding in all civilised states, and nowhere a more established doctrine than in this country.' And again: 'Independently of a residence with intention to continue such residence, independently of any domiciliation, independently of the taking of any oath of allegiance or of renouncing any former allegiance, it is well known that by the public law an alien or a stranger-born, for so long a time as he continues within the dominions of a foreign government, owes obedience to the laws of that government, and may be punished for treason or other crimes as a native-born subject might be.'*" Then he goes on to refer to Hale and East and Foster and approves the law as there laid down.

My Lord, that case shows that there—as, in my submission, in this country—the view was accepted that the local allegiance, the temporary allegiance, of the foreigner continued although the right to protection was temporarily in suspense. I rely upon that because it may be said here that in time of war the protection afforded to the British passport-holder, who was by accident or design in hostile territory, came to an end. In my submission that is not so: at the highest that it could be put, it would be that the protection afforded to the British passport-holder was in suspense. As your Lordship knows in a number of respects the protection does continue in fact. It is not capable of being exercised to the same extent as may be possible in times of peace, but a degree of protection does continue so long as civilised countries continue to observe the usages of international law and the ordinary diplomatic practices.

MR. JUSTICE TUCKER: The application for the passport was not confined to Germany?

THE ATTORNEY-GENERAL: No, my Lord. We have not seen the passport, but the passport application referred to most of the Continent—Belgium, France, Germany, Switzerland, Italy, Austria.

MR. JUSTICE TUCKER: So the passport may have been effective if used in some of those other countries?

THE ATTORNEY-GENERAL: Yes, it could have been effective if used in the neutra countries; it could also be used in the belligerent countries to the extent that it entitled the holder to the protection and interest of the protecting power. It enabled the holder to ensure that he was not called up by the belligerent power for military service in its own forces, I should think; and it entitled him to whatever rights under the ordinary law of nations that particular belligerent power agreed to observe. I cannot say whether this rule would be observed in the case of Germany or not, but in point of fact the protecting power, Switzerland, did continue to operate throughout the war. The fact that it is called the "protecting power" is perhaps not without interest, and it leads one to think of the large class of persons who are called "protected persons," not British subjects by birth, not British subjects under the statute. I suppose now the largest class of them is in Palestine. In my submission, those persons, although not of British nationality, enjoying as they do the protection of the Crown, could certainly commit treason, although they were absent from Palestine. In that connection there is perhaps some comparison to be drawn between a personal passport and a ship's passport, which is a somewhat older conception. In the case of a ship's passport, a ship flying a particular flag and with the pass of a particular country is not allowed to dispute that it is of the nationality of that flag and of that pass.

A passport itself, in my submission, is an extension into the realm of international law and diplomatic practice of the sovereign's protection, and once protection is seen to be the basis of allegiance, then in my submission there is no reason at all in principle to limit it to cases where the protection arises because of residence. I would invite your Lordship to say that it may arise because of birth, it may arise because of an oath of allegiance having been taken, it may arise because of some presence in territory, and equally it may arise in any other circumstances in which the alien concerned voluntarily places himself as a subject under the protection of the Crown, including in fact the protective obligations of the Crown. The protective responsibilities of the State are in many respects much more onerous in the case of a passport-holder than they are in the case of a resident alien. In the case of an ordinary resident alien the alien shares simply a general protection which is afforded to any resident, the State is completely passive, but in the case of a passport-holder the position of the State may be active.

The words in the passport which I mentioned to the jury in making the case clear to the jury are not idle words, and they mean that the whole of the diplomatic and consular machinery of the State is capable of invocation by the passport-holder. The books contain many instances of the way in which the State has intervened to protect the rights of its subjects, even in time of war. There is the obvious possibility of reprisals being undertaken against enemy nationals in this country in the event of our nationals or our protected persons in a foreign country being improperly treated. There is the further possibility—and one sees it in what has happened in the course of the war which has just come to an end—of satisfaction being demanded at the end of the war for any wrong done to individuals who are British subjects or British-protected people. In peacetime the degree of the protection, of course, may be much greater. There are the blockade cases. The blockade of Greece was a very notable instance of it in 1850 arising out of the *Don Pacifico* case, where the State actively intervened to protect the rights of one of its subjects. A similar case occurred against Venezuela in 1902, the *Stevenson* case. The Crown really does assume—and I am not using language of any kind of exaggeration when I say so—grave responsibilities to protect a person to whom



it issues a passport; and equally, of course, it may be under grave responsibilities to other Powers in respect of the acts of the passport-holder abroad. Having issued a passport to a particular person, whether a British subject or not—

MR. JUSTICE TUCKER: *Are* passports issued to people who are not British subjects?

THE ATTORNEY-GENERAL: They can be, as I understand, issued to people who are not British subjects. I imagine that the ordinary case is the case of a British subject, but there is no legal restriction. They have been issued to stateless persons, but after the last war the number of stateless persons became so large that a new procedure was adopted and in certain circumstances, although again there was no obligation on the Crown in regard to it, a special form of passport called the '*Lampson passport*' was issued. It was in fact no more than a kind of certificate of identity; it entitled the holder to no kind of special protection. But, my Lord, where deliberately or by mistake or as the result of fraud the Crown has issued a passport to a particular person as a British subject, it vouches for him, for his nationality and indeed for his respectability, and the Crown may be involved in exactly the same kind of diplomatic representations that it would make itself if a foreigner in this country misbehaved himself, in the event of that passport-holder in a foreign country misbehaving himself and doing acts which resulted in state intervention.

There is only one case of any real interest on passports. There is another case, and an earlier case, which I ought to mention to your Lordship. I have not, I think, got it by me, but I can tell your Lordship quite shortly what the effect of it was. It was a criminal case in which neither the argument nor the judgment were reported, but it was a criminal case in which it was sought to prove foreign nationality by production of a United States passport. The passport was produced; and it was sought, I think, to put an American lawyer into the witness-box to say that passports would only be issued by the United States of America to American-born subjects. It was held that the evidence was inadmissible. There would be many arguments in that case which would not affect this case in the slightest degree. The fact that the United States issued a passport to a person who was not an American subject would not exclude the possibility that that person was subject to the laws of England or some other country. It may be that it was disputed on the ground that there was no identification in that case of the person to whom the United States of America had issued the passport. That is all that case said, and it does not, in my submission, afford any assistance here either one way or the other.

A case of some interest is that of *Brailsford* reported in 1905, *King's Bench Reports*, page 730.<sup>1</sup> That is a case where there was an indictment against two defendants for a conspiracy, and it was alleged that the defendants had unlawfully conspired together to obtain a passport in the name of one of the defendants by falsely pretending that the defendant desired to use the passport himself while travelling in Russia, but in fact intended that the passport should be used by another person. They were indicted for that offence as an offence which was one to the public mischief and endangering the continuance of the peaceful relations between the King and the Tsar and their subjects respectively. It is a little interesting to observe the words of the indictment there, because, to the extent that they go, they appear

<sup>1</sup>In this case two Britons, Brailsford and McCulloch, conspired to obtain a passport in the latter's name in order that it should be used by a Russian revolutionary, in whose possession it was found in St. Petersburg after he had been killed by a bomb explosion. This was one of the present Lord Simon's very early cases: he appeared for the defendants, led by Sir Robert Reid, K.C., who later, as Lord Loreburn, became Lord Chancellor.

to afford some support for the view which I just put to your Lordship, that this country is under a measure of responsibility to foreign countries in respect of the acts of those persons to whom it may issue passports. That is exactly the form of the indictment there, "to the endangerment of the continuance of the peaceful relations between the King and the Tsar."

At page 741, in the course of his summing-up to the jury, the Lord Chief Justice states this: "*You have a copy of the passport before you and I need not read it. You would know, even if you had not seen the copy passport, that it is a representation by the highest official of the British Empire, namely, the Foreign Minister, a requisition in the name of His Majesty to all concerned to allow Mr. Arthur Henry Muir McCulloch to pass freely without let or hindrance, and to afford him every assistance and protection of which he may stand in need. That is not a document which anybody, according to the law of England, is entitled to take or use unless he is Mr. Arthur Henry Muir McCulloch. In obtaining that document, if they obtained it with the knowledge that Mr. Arthur Henry Muir McCulloch was not going to use it, I tell you they were obtaining from the public authority a document which would be of public importance and be used by the bearer for the purpose of his national protection, and in getting that and allowing it to be used by other people, if you are satisfied upon the evidence that they did so, they were carrying out acts which were injurious to the public, in that a public officer was asked to issue to one man a document which they knew was going to be used by another.*"

Then, my Lord, the matter went to appeal and at the bottom of page 744 this passage appears: "*We are clearly of opinion that the count is good, and that the conviction must stand, but in deference to the arguments of Sir Robert Reid, and as the point has never arisen directly before, we think it right to state the reasons for our decision. It is not necessary for us to decide whether, apart from conspiracy, the obtaining of a passport by false pretences, (namely, by alleging that it was required for the use and protection of A.B. whereas it is in fact intended to be used by some third person not known or recommended by the Foreign Office) is of itself a misdemeanour, but as the question has some bearing upon the validity of the conviction on the first count, we desire to make a few observations thereon. It will be well to consider what a passport really is. It is a document issued in the name of the sovereign on the responsibility of a Minister of the Crown to a named individual, intended to be presented to the governments of foreign nations and to be used for that individual's protection as a British subject in foreign countries, and it depends for its validity upon the fact that the Foreign Office in an official document vouches the respectability of the person named. Passports have been known and recognised as official documents for more than three centuries and in the event of war breaking out may become documents which may be necessary for the protection of the bearer, if the subject of a neutral state, as against the officials of the belligerents, and in time of peace in some countries, as in Russia, they are required to be carried by all travellers.*"

My Lord, at that time the passport system was very much in its infancy and passports were not usually required for foreign travel in time of peace.

MR. JUSTICE TUCKER: Have you any idea for what time they have existed?

THE ATTORNEY-GENERAL: I have not been able to ascertain how long they have existed in anything like their present form. They seem to have originated in the form of passes given by the sovereign of one state permitting the passage through his state of foreign subjects: in other words, they were not issued by the subject's sovereign but by the opposite sovereign. I have been unable to ascertain when the name was given to what

is in effect a certificate of identity which is accepted with or without the visa by the foreign power and on which the holder of it is allowed to pass through the foreign country.

The judgment goes on: "*It is not necessary to do more than to remember certain incidents in the nineteenth century to see what grave international questions might arise in the event of a person holding a passport receiving ill-treatment in a foreign country. It cannot, of course, be maintained that every fraud and cheat constitutes an offence against the criminal law, but the distinction between acts which are merely improper or immoral and those which tend to produce a public mischief has long been recognised.*"

And then it goes on to discuss the law in regard to public mischief. My Lord, there are other passages in books on international law on the manner in which the protection of the state is exercised for its subjects in foreign countries, but I do not think at this stage of this case they would be of assistance to your Lordship, and I do not know of any other authority which is directly in point.

My submission, summing it all up is—

MR. JUSTICE TUCKER: Before you do that— You have emphasised the protection aspect of the passport as such, but may it not be that the allegiance that is said to be local may depend upon the residence of the alien, and if that be so, as has been indicated in some of the authorities you have referred to, the residence may not cease by reason of a merely temporary absence from the realm? Supposing, during the recent war, before Italy came into the war, an Italian subject had contrived somehow to have got out of this country for twenty-four hours and to have adhered to the enemy by some act during that twenty-four hours and then returned to this country; would he not still be guilty of treason based upon presence here, although the act was physically committed outside the country?

THE ATTORNEY-GENERAL: I would respectfully submit certainly so.

MR. JUSTICE TUCKER: If that is so, may not in some cases the holding of a passport for a limited period in itself indicate that the departure is for a limited period and not for a permanent period?

THE ATTORNEY-GENERAL: I would respectfully submit that that is so. The passport is an indication that the person while leaving the country is still remaining tied to the country and has the intention to return. The form of the application is that it is expressed to be for "a holiday tour," and there is in the application itself every indication, in my submission, that the passport-holder is applying for facilities to leave this country and to go to various countries for a holiday tour with a view to his eventual re-admission to this country. That perhaps is one of the most important effects of a passport in diplomatic usage. As your Lordship knows, there was during that period a number of people wandering about Europe who found it difficult to find any State which would accept them as its nationals. That was one of the reasons for the present passport system between the two wars. One fully accepted that the international consequence of the issue of a passport by a state is that the state which issues the passport will readmit the holder to its own territory; and so, if that holder goes to Belgium, France, Switzerland, Italy or Austria and they do not want him to stay, they can deport him with the assurance that this country will receive him. Without such a passport they might find themselves saddled with an alien whose presence was not wanted and yet find it impossible to deport him to some other country because no other country would receive him. The passport is not only a certificate of identity, but it is an undertaking that the person who holds it will be allowed to return. I would invite your Lordship to say that, as in the case quoted in *Foster and East*, the alien who leaves his country but has his family remaining

behind him the presence of his family being some evidence as to his intention eventually to return, constituting a tie between himself and his country, so here the existence of a passport is some evidence of intention to return and is some tie between the alien and the state.

MR. JUSTICE TUCKER: Mr. Attorney, if that is right, that I think would be a question for the jury, would it not—the intention with which the passport was taken out and used?

THE ATTORNEY-GENERAL: Yes, my Lord, I think it would. Putting the whole thing in a sentence, I would submit on behalf of the Crown that it is unthinkable that a person who has apparently been domiciled in this country; who has the whole of his family living in this country and who leaves the whole of his family, his relatives, his father and mother and sisters and brothers with the exception of his wife in this country; who has secured from this country the substantial matter of protection that the issue of a passport involves; who has secured the right to return to this country at any time as a British subject; who has declared himself to be a British subject; who uses the passport and travels on it as a British subject, even perhaps as in this case secures employment on it—it is in my submission unthinkable that such a person should not at the corresponding date owe allegiance to the Crown. I would ask your Lordship to deal with the matter, and I submit it in this way under two heads: that here is a man who was resident and indeed domiciled in this country—all the evidence goes to show that—and who left it for a period of time for a purely temporary purpose, retaining the tie of his passport and some family relationship; and secondly, on the basis that here was a man who quite independently of any continuing residence of that kind was under a duty of allegiance because of the protection of the Crown with which he clothed himself.

MR. JUSTICE TUCKER: Mr. Attorney, with regard to count 3, with regard to the other side of the picture, the only overt act laid under count 3 is the broadcasting, the evidence of the witness who said he heard a voice which he identified as that of the prisoner, saying that Folkestone and Dover had been destroyed, is it not?

THE ATTORNEY-GENERAL: There is the contract, my Lord—

MR. JUSTICE TUCKER: The contract was dated much later.

THE ATTORNEY-GENERAL: Yes, my Lord, the contract itself referred to a later period, I respectfully agree—the Work Book, possibly the award, although I do not think I can place much reliance upon that.

MR. JUSTICE TUCKER: What is the date of the award?

THE ATTORNEY-GENERAL: 1944. There is the Work Book and his statement. The Work Book gives the 18th September as the date on which he entered into the employment of the Broadcasting Corporation. Hunt did say in his evidence, I think, as I am reminded, that, although that was the only occasion when he remembered actually what the man had said, he heard him on a number of occasions before he came back to London on the 11th December.

MR. JUSTICE TUCKER: The date of employment was the 18th September it would seem. Yes, Mr. Slade?

MR. SLADE: In my submission to your Lordship, an alien only owes allegiance to His Majesty the King so long as he is resident within the King's dominions.

The whole of the authorities cited by the Attorney-General go to prove that fact, with one possible exception. The only exception that I have been able to find is the statement which appears in *East's Pleas of the Crown* and in *Foster's Crown Law*. I have been unable to track it down, and it is difficult to say from the somewhat meagre reports whether or not it is *obiter*. May I commence, as the Attorney-General did, putting the cases which he said were against him? May I commence by putting the only

statement of the law which, in my respectful submission, can possibly be said to be contrary to the submission which I have just put to your Lordship, namely, in a word, that a non-resident alien, if I may use that convenient expression, knows no duty of allegiance? Will your Lordship look again at *Foster's Crown Cases*. My friend quoted from page 185; may I ask your Lordship to look at page 183, Section 1? "*With regard to natural-born subjects there can be no doubt. They owe allegiance to the Crown at all times and in all places. That is what we call natural allegiance in contradistinction to that which is local. The duty of allegiance, whether natural or local, is founded in the relation the person standeth in to the Crown and in the privileges he deriveth from that relation. Local allegiance is founded in the protection a foreigner enjoyeth for his person, his family or effects during his residence here, and it ceaseth whenever he withdraweth with his family and effects.*"

Turning to page 185, Section 4, where the theory submitted is expounded, Foster says this: "*And if such alien seeking the protection of the Crown and having a family and effects here should during a war with his native country*"—the evidence here is that Joyce left in August, 1939—"go thither and there adhere to the King's enemies for purposes of hostility, he might be dealt with as a traitor. For he came and settled here under the protection of the Crown, and, though his person was removed for a time, his effects and family continued still under the same protection. This rule was laid down by all the Judges assembled at the Queen's command, January 12th 1707." Your Lordship sees a reference to manuscripts, Tracy, Price, Dod and Denton. Then he goes on: "*It is to be observed that the Judges in the resolution last cited laid a considerable stress on the Queen's declaration of war against France and Spain, whereby she took into her protection the persons and estates of the subjects of those Crowns residing here and demeaning themselves dutifully and not corresponding with the enemy. King William and Queen Mary did the same in their declaration of war against France, and so did his present Majesty. These declarations did in fact put Frenchmen residing here and demeaning themselves dutifully, even in time of war, upon the foot of aliens coming hither by licence of safe-conduct. They enabled them to acquire personal chattels and to maintain actions for the recovery of their personal rights in as full a manner as aliens any may. But as I said before all aliens enemy residing here under the protection of the Crown, though possibly not favoured as the persons last mentioned, yet they in case they commit crimes which in a subject would amount to treason may be dealt with as traitors. For their persons are under the protection of the law, and in consequence of that protection they owe a local temporary allegiance to the Crown.*" It is the protection of the law which counts.

Looking at the same reference in *East's Pleas of the Crown* again, I would like to start a little bit earlier, at volume 1, page 52. I think my friend started reading at the foot of page 52. I need not read earlier. I want to read a little later: "*Local allegiance is that which is due from a foreigner during his residence here, and is founded in the protection he enjoys for his own person, his family and effects during the time of that residence. This allegiance ceases whenever he withdraws with his family and effects*"—The argument of the Attorney-General for the moment is, leaving out the family and effects, that this allegiance ceases whenever he withdraws his family and effects, and provided he has no *animus revertendi*—those are the words which the Attorney-General is asking your Lordship to read into that for the moment—"for his temporary protection being then at an end, the duty arising from it also determines. But if he only go abroad

<sup>1</sup>Intention of returning.

himself, leaving his family and effects here under the same protection, the duty still continues, and if he commit treason he may be punished as a traitor : and this whether his own sovereign be at enmity or at peace with ours. Therefore, if he aid even his own countrymen in acts or purposes of hostility while he is resident here, he may be dealt with in the same manner. The above rule was laid down by all the Judges assembled at the Queen's command on the 12th January, 1707."

Your Lordship will see it is not easy to see what the rule was which was laid down in 1707 by all the Judges. On a strict grammatical reading it is different in *East* from the way it is put in *Foster*. The rule which is laid down according to *East* is, and I will read it again: "*Therefore, if he aid even his own countrymen in acts or purposes of hostility while he is resident here, he may be dealt with in the same manner. The above rule was laid down by all the Judges assembled.*" It may be possible to read into both, including the six or seven lines which immediately precede, "*Therefore if he aid even his own countrymen in acts or purposes of hostility while he is resident here.*" If that is the case it would be quite impossible to say whether the rule was laid down in any particular case or whether it was purely *obiter* : but in my submission the grammatical construction is that it only applies to the words "*while he is resident here*": and that is in consonance with the whole of the authorities on the point. "*It has indeed been observed that the Judges in that resolution laid considerable stress on the Queen's declaration of war against France and Spain, in which she expressly took under her protection the persons and estates of the subjects of those crowns residing here and demeaning themselves dutifully and not corresponding with the enemy, for by that declaration, say they, those aliens were put upon the foot of aliens coming here by licence or safe-conduct.*" I take this to mean that by that declaration Her Majesty the Queen—I suppose it would be Queen Anne—was putting enemy aliens upon the same footing as aliens army, because she was putting them upon the same footing as aliens coming here by licence. "*Yet I cannot think that this circumstance essentially altered the case, for the mere fact of being domiciled here does in itself imply an allegiance and an engagement to be true and faithful to the government by which such domicile is protected, and at any rate that the party shall not take advantage of this indulgence to prejudice the state more easily and effectually. This latter I take to be the true ground upon which an alien enemy, domiciled in this country, may in sound reason and justice be dealt with as a traitor for aiding or advising his own countrymen in acts of hostility.*" The ground upon which *East* puts it is that certainly an alien enemy should not be put in a better position by being allowed to come and remain over here while the sovereign is at war, than any other person would be for the purpose of doing injury to the state. As your Lordship sees, he says "*Yet I cannot think that this circumstance essentially altered the case*"—that was the circumstance, I imagine, that he had temporarily gone during the war, leaving his family here which the Queen had taken under her protection.

Then he comes to a different point, unless my friend wants me to read any more, a case relating to an ambassador. I will deal with the question of a passport when I come to it, but may I say that you do not leave your family here when you leave your father here? You have got no say whether your father will stay here or whether he will go elsewhere; you do not leave your family here by leaving your brother who is of age here, or anyone else who is *sui juris*<sup>1</sup> or anyone else over whom you have no control. "Your family" means, in my respectful submission, your wife and your

<sup>1</sup>His own (legal) master.

own children, and "effects" means the effects which belong to *you* and not the effects which belong to your father or to your sister or to your brother. The evidence, your Lordship will remember, with regard to the wife—there is no evidence that there are any children—appears, among other places, in the prisoner's statement.

MR. JUSTICE TUCKER: The prisoner's statement may be evidence in so far as it contains admissions, but the mere fact that he has stated facts in his statement does not prove the truth of those facts.

MR. SLADE: It does not prove them, but, I respectfully submit, a statement put in in those circumstances and including the words "This statement has been read over to me and is true," and being put in by the Prosecution, is some evidence. If your Lordship rules against me, then I change my tactics and say that there is no evidence given by the Prosecution which is not equally satisfying from the point of view of the defence.

MR. JUSTICE TUCKER: No evidence as to which particular point?

MR. SLADE: No evidence that Joyce went abroad leaving his wife.

MR. JUSTICE TUCKER: There is no evidence, as far as I know, that he was ever married.

MR. SLADE: No, my Lord.

MR. JUSTICE TUCKER: According to the evidence of the Prosecution, it is true he made some reference to the presence of his wife when he was arrested, but I do not know when he was married or anything about it, or whether he was married in August or September, 1939.

THE ATTORNEY-GENERAL: My Lord, there is in the passport application form—he is asked whether married or single; he says "Married." And then he is asked to give his domicile.

MR. JUSTICE TUCKER: Yes.

MR. SLADE: Surely, my Lord, if his statement is not evidence, the statement in the passport would be evidence. If the statement is evidence—your Lordship rules it is not—it deals with the point I want to deal with further.

MR. JUSTICE TUCKER: Mr. Slade, surely this is elementary; it is a matter we have to deal with in the criminal courts again and again and again. A man makes a long statement to a police officer full of details; that is not evidence until he comes into the witness box and swears to the truth of it. Statements made by him in an application for a passport could, of course, be used as evidence against him.

MR. SLADE: Your Lordship says it is quite elementary.

MR. JUSTICE TUCKER: Mr. Slade, I withdraw that; I do not think I should have said that. I don't like people using the word "elementary" to me when they are making submissions to me, and I should not have used it.

MR. SLADE: Not at all, my Lord. I do not profess to have profound knowledge of criminal law or any law at all. Your Lordship is obviously right and I am wrong. May I say in those circumstances I would not dream of advancing that argument any further? May I submit that, in so far as there is evidence that he is married, it is contained in the passport and there is no evidence that his wife was living here? Let us get rid of her.

MR. JUSTICE TUCKER: It is merely a matter indicating that the severance from this country must be a final act and not something merely temporary.

MR. SLADE: I submit to your Lordship that it means this: that, so long as you leave your wife and family and your effects under the King's protection—that is to say, you rely upon the King to protect those who are nearest and dearest to you and your own effects by being given the help of the law to protect those effects—you cannot say, "I will go off and commit treason somewhere else, leaving my wife and children over here under the protection of your Majesty." That is how I should put it. If that is so, then a number of the dicta of the Law Lords in *Johnstone and Pedlar* must have been

singularly unfortunate and indeed a number of the dicta in all these books, which seem to say that it ceases as soon as the alien leaves the country. I have referred to the two in which alone any suggestion to the contrary can be found. Apart from those two I should have thought that the contrary was almost unarguable, if I had not heard my learned friend arguing it. Now I want to give your Lordship, if I may, a collection of instances where it is said over and over again—I put it compendiously—that allegiance is co-existent only with residence in the case of an alien.

MR. JUSTICE TUCKER: Are you contending that residence means the physical presence in this country of the man?

MR. SLADE: Yes.

MR. JUSTICE TUCKER: He must always be physically present in the country when he commits a treasonable act?

MR. SLADE: Yes. I say the only authority, if it is an authority, to the contrary are the two passages which I have read. I think I am right in saying that not one single authority has been quoted, apart from those two passages, which suggests anything to the contrary. Passage after passage which he has quoted is quite inconsistent with local allegiance applying to a non-resident alien.

MR. JUSTICE TUCKER: Even in the case of the Italian which I put to you?

MR. SLADE: Would your Lordship put the case of the Italian to me again? I would like to be careful before I answer the question.

MR. JUSTICE TUCKER: An Italian before we were at war with Italy who had been resident in this country for a number of years and as such owed allegiance, managed to get out of this country and do some act of adherence to the Germans and got back again twenty-four hours later.

MR. SLADE: Then I should say he was not triable for treason. He would not be an enemy alien at the moment he went out, and I say he would not commit the offence of treason, whatever other offence he might commit, and I say that the Treachery Act of 1940 was passed for the express purpose of bringing those persons within the ambit of the criminal law.<sup>1</sup> I told your Lordship I would give you a reference, if I may, because there are several more than *Johnstone and Pedlar*. I think there are more than my learned friend mentioned. Before I cite them may I add this? My learned friend the Attorney-General kept on saying to your Lordship something to this effect in the course of his submission—I took it down. After citing *Coke's Institutes* he said, "Not only who is resident here, but who receives protection." After quoting *Hale's Pleas of the Crown* he said, "Something more is required than the mere presence of the alien here if he enjoys the benefits of the King's protection"—something more! May I respectfully agree with that argument, to this extent at least, that whatever more may be required, if anything, the *sine qua non* is residence here? And may I furthermore say that I shall elaborate this argument when I come to the passport?

International law—if there is such a thing as international law? which I do not for one moment admit—has nothing whatever to do with this case. Allegiance depends upon the municipal law of this country, that is to say, the constitutional law of this country. There was no sanction attached to international laws, as we have noticed in the last two wars of this country.

May I take *Johnstone and Pedlar* first of all?

MR. JUSTICE TUCKER: Yes, do.

MR. SLADE: *Johnstone and Pedlar* is in 1921, 2 *Appeal Cases*, 262. Your Lordship has some idea of the facts. May I point out what happened?

<sup>1</sup>This was the Act in respect of which the second indictment had been drafted against Joyce.



The plaintiff in that case, I think, was a naturalised American citizen, as in this case. He had come over to Ireland, as it then was, and taken part in treasonable activities by illegal drilling. He brought an action of tort to recover certain property of which he had been deprived, and the Defence which was put up was, in substance, that the money was withheld from him on the authority of the Government and was an act of State. Your Lordship knows, of course, that you cannot have an act of State against a British subject, and I think this case held that you could not also have an act of State against an alien army while resident in this country. The argument put up for the Defence (but not, I think, raised in the pleadings) was that whatever right an alien army might have had by his residence within the King's dominions he had forfeited by reason of his treasonable activities. Therefore this case is important upon two aspects of the present case. If there is anything in the argument of my friend about the passport, which I will deal with in due course, I shall say that whatever protection was afforded to Joyce by the British passport, he must lose the right to it the moment he did, as the Prosecution allege that he did, start treasonable activities. That point was left undecided in *Johnstone and Pedlar*. In the speech of Lord Finlay commencing with the last line on page 272, your Lordship will see: "*The plaintiff is not a subject of the British Crown, but he was at the time of his arrest within British territory. It was contended for him that he must be treated for the purposes of the present case as a British subject, inasmuch as he was at the time resident in Ireland. Hale, in his Pleas of the Crown, after discussing a statute of Henry VIII, giving to any of the King's subjects whose goods have been taken away the right to a writ of restitution on conviction of the thief, says, 'Though the statute speak of the King's subjects, it extends to aliens robbed: for, though they are not the King's natural-born subjects, they are the King's subjects when in England by a local allegiance.' The subject of a state at peace with His Majesty, while permitted to reside in this country, is under the King's protection and allegiance and may be convicted of high treason in respect of acts committed here.*"

My Lord, Lord Finlay is quite clearly, in my respectful submission, saying here that, while permitted to reside in this country, he is under the King's protection and allegiance and may be convicted of high treason in respect of acts committed here. He could not commit acts here if he were out of the jurisdiction. "*The proposition put forward on behalf of the appellant was that residence in this country does not put an alien in the same position as a British subject in respect of acts of State of the Government and does not entitle him to bring an action against a tortfeasor whose act has been ordered or adopted by the Government. I am quite unable to accept this proposition as a correct statement of our law. On such a view of the law, aliens in this country, instead of having the protection of British law, would be at the mercy of any department entitled to use the name of the Crown for an act of State. It would have effects upon aliens in this country of a far-reaching nature as to person and property. If an alien be wrongfully arrested, even by order of the Crown, it cannot be doubted that a writ of habeas corpus is open to him, and it would be surprising if he has not the right to recover damages from the person who has wrongfully imprisoned him. He has corresponding rights as regards his property. I am unable to find any ground either of principle or of authority for a proposition so sweeping, which would profoundly modify the position in this country of many aliens whose conduct while resident here has been quite without reproach. But it does not necessarily follow that an alien who abuses for treasonable purposes the permission of the Crown to reside in this country will still be at liberty to claim the rights of a British subject as against the servants of the Crown*"

who have carried out any act of State affecting him or his property. While he is in this country the alien as a matter of law is in the allegiance of the Crown, and he cannot get rid of this local allegiance so as to acquire while here any immunity for crimes committed against the State. But it would be a somewhat startling proposition that an alien who is engaged in acts of rebellion can claim as against the Crown or its agents that he enjoys the immunity of a British subject in respect of acts of State. While repudiating all the obligations, can he retain as between himself and the Crown all the benefits attaching to the status of a British subject? One who is by birth or by naturalisation a British subject and commits treason still, of course, remains for all purposes a British subject and must be treated as such in every respect; but the alien in this country remains an alien still, although for the time also a British subject in virtue of local allegiance. If he be guilty of a treasonable act, can he be permitted to assert for his own benefit against the servants of the Crown the status of a subject of the Government which he is endeavouring to subvert? *Prima facie* the subject of a state at peace with His Majesty, while a resident in this country, is entitled to the protection accorded to British subjects."

May I now invite your Lordship's attention to Lord Cave at page 275, the second paragraph? "*When a wrong has been done by the King's officer to a British subject, the person wronged has no legal remedy against the sovereign, for the King can do no wrong; but he may sue the King's officer for a tortious act, and the latter cannot plead the authority of the sovereign, for from the maxim that the King cannot do wrong it follows as a necessary consequence that the King cannot authorise wrong. On the other hand, where the person injured is an alien resident abroad, the above rule does not apply and, if the act causing the injury is adopted by the sovereign as an act of State, the alien is without redress except by diplomatic action taken through the government of his own country.*" I am reading that particular passage because in a moment I shall hope to be able to show what my friend's submission will lead to, if it is correct.

May I, while I am citing that, tell your Lordship what is in my mind? We are concerned here with a British passport which has in fact been issued to an American subject. The Crown has no jurisdiction to issue British passports to American subjects. Your Lordship was told at some stage of this case yesterday the sort of protection that a man owning a British passport became entitled to. Let us see, by taking an illustration, what sort of protection he would get when *ex hypothesi* he is an enemy subject. Say he goes to Spain and someone in Spain wants to do him an injury and he says, "You may not do that to me. I shall go and see our ambassador in Madrid," all the time *ex hypothesi* being an American having obtained a British passport. He goes to the ambassador and says, "Protect me, this man wants to harm me." The ambassador says, "You must not harm this man; he is a British subject." To which the Spaniard replies, "Nothing of the kind. That is what he tells you. He is an American, and your Crown had no right to issue a passport to an American subject." I can only ask the question rhetorically: What protection does your Lordship think that an American would get in those circumstances in Spain?

Take one more illustration. *Ex hypothesi*, as I say, Joyce is now an American subject. Supposing in August, 1939, when he left Great Britain, instead of going to Germany, he had gone to New York, his own country; and supposing America had come into the war against us instead of on our side; he would have been liable for service in the American Army. Whatever he tried to do, if the passport lasted for a year, and it might have lasted for five years—it had an extension for five years—he would commit treason

against this country by fighting for his own country! There are other absurdities which I will deal with later; but in my submission, quite apart from all these, it is extravagant in the extreme to say that a man who, according to the case for the Prosecution, left this country for the express purpose of committing acts which would be undoubtedly treasonable, if he owed allegiance, only left here temporarily, intending to come back, and put his head into the lion's mouth so that he could be sentenced to be hanged. That is the sort of extravagant suggestion, if I may say so, which is being put forward in this case.

MR. JUSTICE TUCKER: Are they not questions for the jury, in so far as it becomes a question for the jury? You say 'a man who left for the purpose of committing treasonable activities.' I do not know whether that was so or not. I do not know what was in his mind when he left in August, 1939, if indeed he did leave in August. I do not know whether there is any evidence when he left. His application for the passport was in August, I think, but I do not know whether there is any evidence when he left.

MR. SLADE: I think the evidence is the second renewal in August, 1939.

MR. JUSTICE TUCKER: In making submissions to me, when you tell me that he left in August with the deliberate purpose of treasonable activities, I have no evidence of that.

MR. SLADE: I hope I am not trying to address your Lordship upon any matter which is for the jury. I will deal with the question later with the jury, if there is any evidence at all; whether there is any evidence at all is a matter for your Lordship. I will only for the moment put the *reductio ad absurdum* which I shall put later on to show the sort of consequence which would emerge if the Attorney-General is right in his submission.

MR. JUSTICE TUCKER: I don't want to say anything which would embarrass you at this stage, but, when we are dealing with this kind of subject, when you talk about coming back to the country and putting his head in a noose, it might depend on whether we won the peace or not or whether there had been an early peace. All kinds of things may have been in the minds of people in August, 1939.

MR. SLADE: I respectfully agree. He would only come back if there were an early peace which resulted in a victory for Germany. I merely cite the words "the King cannot authorise wrong." His Majesty the King would not dream of authorising the issue of a British passport to an American citizen. The only way it is done in this case is because the Foreign Office was deceived by the misstatements made in the form of application. "*But there is a third case, namely, where the person aggrieved is an alien and resident here, and I think that it is the established law that such a case falls within the first and not within the second of the above categories.*" My Lord, I am reading this because I think it may assist your Lordship to know how, in my submission, the law in regard to aliens may come to be established. At one time they had absolutely no rights whatever. Their rights started by being purely civil rights. They could not protect their property. "*It was laid down by Littleton that an alien could bring no action real or personal, but as regards an alien and his proposition was disputed by Coke who said, 'In this case the law doth distinguish between an alien that is a subject to one that is an enemy to the King and one that is subject to one that is in league with the King, and true it is that an alien enemy shall maintain neither real nor personal action, donec terræ fuerint communes—that is, until both nations be in peace—but an alien that is in league shall maintain personal actions; for an alien may trade and traffic, buy and sell, and therefore of necessity he must be of ability to have personal actions, but he cannot maintain either real or mixed actions.'*" So Coke was in disagreement there.

"Certainly Littleton's rule was not recognised by the Law-Merchant or in Chancery, and before the end of the sixteenth century it was established that at Common Law an alien friend could own chattels and sue on a contract or in tort in the same manner as a British subject. No doubt a friendly alien is not for all purposes in the position of a British subject. For instance, he may be prevented from landing on British soil without reason given; and, having landed, he may be deported, at least if a statute authorises his expulsion. But so long as he remains in this country with the permission of the sovereign, express or implied, he is a subject by local allegiance with a subject's rights and obligations." Lord Cave there, in my respectful submission, is clearly saying—my friend said "reciprocal"; I accept that word, but I prefer to say "the duty of allegiance," if you like—the alien had no status at all. Gradually the law evolved so as to give him rights to maintain personal actions, to have, in other words, the same benefit of the laws of this country that a British subject had; and the corollary to that was that the allegiance and the laws of this country only apply in this country and in the British dominions and they cease to apply when you go out of the King's dominions, and the correlation between allegiance and protection is the protection afforded by the laws of this country as administered by the Crown. At any rate Lord Cave said quite clearly that, so long as he remained in this country, there is a local allegiance. I don't think I need read any more from Lord Cave.

The next opinion is the opinion of Lord Atkinson at page 283, the last line: "*A friendly alien resident in this country can undoubtedly be prosecuted for high treason*"—*De Jager's case*—"because it can then be averree that he acted contra ligentiae suae debitum; Calvin's case. For the same reason an alien enemy can be prosecuted for high treason if he has accepted the protection of the sovereign, but not otherwise." "Accepted the protection of the sovereign" must mean in that context, "Accepted the protection of the sovereign by becoming resident in this country." That is what it means for the same reason. Curiously enough Lord Atkinson cites a passage in *Foster*.

The next passage in Lord Sumner's speech which my friend read is at page 292—I want to read as little as I possibly can—"The matter which he had in hand is the contrast between ligentia localis which begins no earlier than"—my Lord, I do emphasise these words—"and continues no longer than the presence of the alien amy within the realm"—Your Lordship asked me whether I meant physical presence and I said yes; there is no distinction between physical presence and presence, as Lord Sumner says—"No earlier than and continues no longer than the presence of the alien amy within the realm." If that is right, in my respectful submission the whole of the case for the Crown goes. If the case for the Crown is right, then Lord Sumner is wrong.

Then finally on this case Lord Phillimore, at page 297, in the third paragraph, says, "*From the moment of his entry into the country the alien owes allegiance to the King till he departs from it.*" It does not say till he departs from it either with or without intention to return. Allegiance, subject to a possible qualification which I shall mention, draws with it protection just as protection draws allegiance. If the Crown is right, then Lord Phillimore is wrong.

MR. JUSTICE TUCKER: Yes, subject always to this, Mr. Slade. A statement of the law has always got to be looked at having regard to the particular subject-matter which was under discussion in any particular case. I am not saying in the least that you are wrong, but in case after case emphasis, of course, is laid on residence and so forth. The whole question is whether

in every case where those words are used they are necessarily given an exhaustive examination. You say either the Crown is wrong or Lord Phillimore is wrong.

MR. SLADE: I am not suggesting for one minute that any of these passages are part of the *ratio decidendi* in this case.

MR. JUSTICE TUCKER: No, you are saying it is not an exhaustive examination.

MR. SLADE: I am not saying it is exhaustive, and it is open, of course, to the perfectly fair comment that none of their Lordships' minds was specifically directed to that point. That I agree. No doubt Law Lords make statements which go beyond the requirements of the occasion when their minds are not directed to that point, but there is a remarkable uniformity, if they are mistakes, in this case. Of course, I am suggesting they are not mistakes and they err in good company because they err with Blackstone and Hale and other writers whom I shall mention to your Lordship in a moment. The next are Lord Justice Cockburn and, I think, Baron Bramwell.

MR. JUSTICE TUCKER: We will adjourn now.

### THIRD DAY.—WEDNESDAY, 19TH SEPTEMBER, 1945.

THE ATTORNEY-GENERAL: Before my learned friend resumes his argument I have an application which I wish to make to your Lordship with regard to counts 1 and 2 of the indictment. I have had an opportunity of considering the matter with my learned friends during the adjournment, and I would ask your Lordship's leave to amend counts 1 and 2 by inserting the words "*being a British subject*," in substitution for the words "being a person owing allegiance to the Crown."

I think that would help to clarify the position on the record, and it would make it clear that in respect of the first two counts we had relied on the defendant's duty of allegiance as a British subject. As the matter stands the arguments which I have addressed to your Lordship on count 3 would be applicable to count 1, at all events up to the date of the expiration of the passport. If we amended the first two counts in that way, it would be quite clear in relation to anything which can be left to the jury that the first two counts are dealing with the matter on the basis of British nationality, and I shall of course invite the jury to find, and your Lordship will direct them, that the evidence is the other way.

MR. JUSTICE TUCKER: Mr. Slade, have you any objection to that?

MR. SLADE: I confess I have no objection at all, but as I could not consent to any amendment of that kind, I would prefer to leave it to your Lordship's discretion.

MR. JUSTICE TUCKER: Do you mean you have no wish?

MR. SLADE: That looks as though I was being ungracious.

MR. JUSTICE TUCKER: No, no, I only want to understand.

MR. SLADE: To put it quite frankly, the point was mentioned to me two minutes ago. I am not complaining about that at all and, of course, quite candidly I have not had the opportunity of seeing any possible repercussions which might result. That is all. I have received so much assistance from the Prosecution that I would not appear to be ungracious, and I put it that way.

MR. JUSTICE TUCKER: I only wish to understand.

MR. SLADE: Your Lordship appreciates the nature of the case I have to defend.

MR. JUSTICE TUCKER: Certainly.

MR. SLADE: I don't want it to be said in any way that I have actually consented to that.

MR. JUSTICE TUCKER: Yes. I think it is a proper amendment to be made and, so far as I can see, I think it is one that is likely to be of assistance to the Defence rather than the reverse. Let the amendment be made.

THE CLERK OF THE COURT: May I have that definitely? It is inserting "being a British subject" instead of "a person owing allegiance to our Lord the King"?

MR. JUSTICE TUCKER: No, not instead of "owing allegiance."

THE ATTORNEY-GENERAL: "To wit, being a British subject owing allegiance to our Lord the King."

THE CLERK OF THE COURT: Instead of the word "person" you want the words "British subject"?

THE ATTORNEY-GENERAL: Yes.

MR. JUSTICE TUCKER: Yes, Mr. Slade?

MR. SLADE: Your Lordship may remember that on page 185 of *Foster's Crown Law* the reference to the resolution of all the Judges of January 12th 1707, contains a marginal note which I read as "*Manuscripts, Tracy, Price, Dod and Denton.*" I have been puzzled to know what that referred to and I have not succeeded at the moment.

MR. JUSTICE TUCKER: Are you referring to *East*?

MR. SLADE: Page 185 of *Foster's Crown Law*. There are three editions, but they are all the same pagination. Your Lordship sees "*Tracy, Price, Dod and Denton.*" I have not been able to find that, at any rate so far, but from my researches last evening I think the explanation may be this, and for the information I am going to give to your Lordship I am indebted to an article entitled "The Parliamentary Declaration of Treason," written by Professor Samuel Rezneck in 46 *Law Quarterly Review*, which I am having sent for. Apparently it was the practice shortly after the Restoration for the Judges to hold conferences before a trial or a body of trials for attainder of treason was held. Usually they were accompanied by the counsel for the Crown, and they thereupon laid down the law without hearing any argument upon it, except possibly from counsel for the Crown, and the article I am referring to recites that Sir Mathew Hale himself attended one of those conferences in 1675, and the article also recites what Sir Mathew Hale had to say about that practice. I leave it there. I only mention it so that your Lordship may notice the differentiation between the word "might" which appeared in one and I think the word "may" which appeared in the other. I mention that because of any weight which might otherwise be attached to that resolution of the Judges. That is only surmise.

Perhaps I may refer your Lordship now to Sir William Blackstone from whom I cited passages from the Law Lords' opinions in *Johnstone and Pedlar*. I said that it would be a fair comment that their Lordships' minds in making those statements were not directed towards the particular point with which your Lordship has to deal. The same certainly cannot be attributed to Sir William Blackstone and, if Sir William Blackstone is right, then the Crown is wrong. In volume 1, page 370, his language admits of no possible misunderstanding.

MR. JUSTICE TUCKER: Mr. Attorney, will you lend me your *Blackstone*?

MR. SLADE: Your Lordship will see it is in Book 1 at page 370.

MR. JUSTICE TUCKER: Yes.

MR. SLADE: "*Local allegiance is such as is due from an alien or stranger-born for so long time as he continues within the King's dominions and protection, and it ceases the instant such stranger transfers himself from this kingdom to another.*" I would ask your Lordship to bear that in mind in connection with the illustration of the Italian. "*Natural allegiance is therefore perpetual and local temporary only, and that for this reason evidently founded upon the*

MR. JUSTICE TUCKER: That would, of course, depend upon the statute which creates the offence.

MR. SLADE: I shall call your Lordship's attention to *The Queen v. Jameson* and to the statute creating the offence. In 1707 certainly this was the law, if Sir William Blackstone is right. The Treason Act which is material to the point is the Treason Act of 1543, which I shall deal with in a moment, which had also been passed some one hundred and fifty years before 1707 and long before this case. I content myself for the moment with saying this, that no court in this country has jurisdiction to try any treason alleged to have been committed by an alien abroad, and that is the corollary to Sir William Blackstone's insistence that residence in this country is the *sine qua non*. My Lord, I ought to say that in raising that point about jurisdiction, which I shall trace out later, I am indebted to my friend Mr. Burge for very kindly suggesting it to me, and I shall respectfully submit in due course that it is a good point and indeed an unanswerable point. For the moment I am merely concerned to show your Lordship why all these learned authors and learned Judges are so anxious to emphasise that residence is so essential when you are dealing with an alien.

The next case is one to which I think your Lordship has not yet been referred, *The Queen v. Keyn*, 1876, 2 *Exchequer Division*, 63.

MR. JUSTICE TUCKER: Is there any reference to that case? What is the date?

MR. SLADE: 1876. It is an extremely long case, and I only propose to read two passages, but I will read the headnote because your Lordship will see how it turned upon jurisdiction, although this is not one of the cases I specifically rely on in relation to jurisdiction: "*The prisoner was indicted at the Central Criminal Court for manslaughter. He was a foreigner and in command of a foreign ship, passing within three miles of the shore of England on a voyage to a foreign port, and whilst within that distance his ship ran into a British ship and sunk her, whereby a passenger on board the latter ship was drowned. The facts of the case were such as to amount to manslaughter by English law. Held, by the majority of the Court*" —Chief Justice Cockburn, Chief Baron Kelly, and so on; there was a number of dissenting opinions, as your Lordship sees, Lord Coleridge, Mr. Justice Brett, and so on—"that the Central Criminal Court had no jurisdiction to try the prisoner for the offence charged. By the whole of the majority of the Court on the ground that, prior to 28 Henry VIII, c.15, the admiral had no jurisdiction to try offences by foreigners on board foreign ships, whether within or without the limit of three miles from the shore of England; that that and the consequent statutes only transferred to the

*Common Law courts and the Central Criminal Court the jurisdiction formerly possessed by the admiral, and that therefore in the absence of statutory enactment the Central Criminal Court had no power to try such an offence."*

On page 150, in the last paragraph but one of the judgment of Baron Bramwell, who of course was one of the majority, he says, "*There is another remark I wish to make on this head. As a rule where the sovereign has jurisdiction there is allegiance, permanent, as subject or citizen : or temporary, as being within the territory. In such case there is a corresponding duty of protection. Do any of those exist in this case ?*" It is put more strongly by Chief Justice Cockburn at page 236: "*But in order to render a foreigner liable to the local law, he must at the time the offence was committed have been within British territory if on land or in a British ship at sea. I cannot think that if two ships of different nations met on the ocean and a person on board of one of them were killed or wounded by a shot fired from the other, the person firing it would be amenable to the law of the ship in which the shot took effect. According to the doctrine of Lord Coke in Calvin's case protection is afforded by the law that the obligation of obedience to the law arises : or, as I prefer to put it, it is only for acts done when the person doing them is within the area over which the authority of British law extends that the subject of a foreign state owes obedience to that law or can be made amenable to its jurisdiction.*" I would like to read on a little: "*But for the opinion expressed by my brother Denman, I should have thought it beyond all dispute that a foreign ship, when not in British waters, but on the high seas, was not subject to our laws. Upon this point I had deemed all jurists unanimous and could not have supposed that a doubt exist. Upon what is the contrary opinion founded ? Simply upon expediency which is to prevail over principle. What, it is asked, is to happen if one of your officers, enforcing your revenue laws, should be killed or injured by a foreigner on board a foreign ship ? What is to happen if a British and foreign ship meeting on the ocean, a British subject should be killed by a shot fired from the foreign ship ? In either of such cases would not the foreigner guilty of the offence be amenable to the English law ? Could it be endured that he should escape with impunity ? If brought within the reach of a British court of justice, could he not be tried and punished for the offence and ought he to be permitted to escape with impunity or ought he not to be tried and punished for such offence ? My first answer is that the alternative is fallacious. He will not escape with impunity. He will be amenable to the law of his own country, and it is not to be presumed that the law of any civilised people will be such or so administered as that such an offence should escape without its adequate punishment. As regards the amenability of the offender under such circumstances to our law, it will be time enough to determine the question when the case arrives. If the conviction and punishment of the offender can only be obtained at the sacrifice of fundamental principles——"* Then the Lord Chief Justice goes on.

The next authority that my friend cited is from Coke, volume 3, page 4 of the *Institutes*, the last paragraph but one: "*And all aliens that are within the realm of England and whose sovereigns are in amity with the King of England are within the protection of the King and do owe a local obedience to the King, are homes within this act, and if they commit high treason against the King they shall be punished as traitors, but otherwise it is of an enemy whereof you may read at large.*" In my respectful submission why Sir Edward Coke there is saying "*whose sovereigns are in amity with the King of England*" is this: that the Attorney-General in opening the case said that any alien who is placed or places himself within the jurisdiction of the Crown is amenable to the justice of this country, which indeed is true, but if an alien chooses to come over here while his country is at peace



and misdemeanors himself over here—of course he has only himself to blame if he has a divided allegiance—but supposing an alien comes over here and while he is over here his sovereign declares war upon England, he would at once, if my friend's proposition is correct, be placed through no fault of his own under the protection of two sovereigns who *ex hypothesi* are at war with each other. That is why, in my respectful submission, Sir Edward Coke emphasises the words "*are in amity with the King of England*," but there again Sir Edward Coke makes it clear that the residence and local allegiance are co-extensive only.

The next authority is, I think, *Hale's Pleas of the Crown*, page 58. I think the passage my friend read was towards the end of page 58: "*But if an alien, the subject of a foreign prince in amity with the King, live here and enjoy the benefit of the King's protection and commit a treason, he shall be judged and executed as a traitor for he owes a local allegiance.*" The words are of course "*live here*," otherwise Hale carries the matter no farther.

The next case was *Calvin's case*, and I shall have to read a little bit more of *Calvin's case*. I have the report in 77 *English Reports*, 377. May I read from 4b? It says in my copy in paragraph 5 "*and first, de ligeantia*. 1. (a)"—Does your Lordship see that passage?

MR. JUSTICE TUCKER: Where is it?

MR. SLADE: In 4b of 7 *Coke's Reports*. It first of all says 1, 2, 3, 4, 5, and then proceeds under 5 to set out again 1 and 2, preceded by the words "*and, first, de ligeantia*."

MR. JUSTICE TUCKER: Is that *Calvin's case*?

MR. SLADE: Yes, my Lord, *Calvin's case* in 7 *Coke's Reports*, 4b, concerning allegiance: "1. (a) *Ligeance is a true and faithful obedience of the subject due to his sovereign. This ligeance and obedience is an incident inseparable to every subject, for as soon as he is born he oweth by birthright ligeance and obedience to his sovereign.*" Then there is a Latin quotation, but I will not trouble your Lordship with that. That is where he comes into the expression, "*Therefore it is truly said that protection draws subjection and subjection protection.*" I desire to emphasise that this protection is always the protection of our laws, which is only applicable so long as the alien is within the realm. At page 383 in the *English Reports*—5b in your Lordship's report—it says, "*There is found in the law four kinds of ligeances: the first is ligeantia naturalis, absoluta, pura et indefinita, and this originally is due by nature and birthright, and is called*"—what I translate as "highest allegiance"—"*and he that oweth this is called 'subject-born'.*" The second is "*acquired allegiance*," "*not by nature but by acquisition or denization.*" The third is called "*local allegiance*," "*wrought by the law, and that is when an alien that is in amity cometh into England, because as long as he is within England, he is within the King's protection, therefore so long as he is here he oweth unto the King a local obedience or ligeance, for that the one, as it hath been said, draweth the other.*" May I emphasise that the Latin maxim there is expressly applied to the protection which arises from residence, that is to say, the power of the laws, and it is that which draws the duty of allegiance. May I ask your Lordship to look finally in this case at 6a, No. 3? "*Concerning the local obedience it is observable that, as there is a local protection on the King's part, so there is a local ligeance of the subject's part. And this appeareth*"—in 4 *March* (Brooke) and *Dyer*—"*Sherley, a Frenchman, being in amity with the King, came into England and joined with divers subjects of this realm in treason against the King and Queen and the indictment concluded contra ligeant, suae debitum, for he owed to the King local obedience, that is, so long as he was within the King's protection, which local obedience being but momentary and uncertain is yet strong enough to make a natural subject, for if he hath issue here that issue*

is a natural-born subject." Of course, if he had issue after he went to Italy for a day it would not be a British subject. That is *Calvin's case*; *Calvin's case* was, I think, in the early seventeenth century.<sup>1</sup>

The next case my learned friend cited was *De Jager and the Attorney-General of Natal*. If the Crown is right, the whole of the elaborate argument of Sir Robert Finlay in that case was quite pointless. De Jager was a Dutchman who was resident in a place, I think, called Waschbank in Natal, and Natal was British territory; therefore he was a Dutchman resident in British territory. The Boers occupied Waschbank, that part of Natal, and the British were forced temporarily—in fact for six months, I think—to retire to Ladysmith; and while the Boers were in occupation he, of course, being a Dutch subject would be a Boer. While the Boers were in occupation of Waschbank and the British were at Ladysmith he acted treasonably, and it was argued by Sir Robert Finlay—and this is the second important point in this case—that, as he had lost *de facto* British protection when the British forces were removed from Waschbank, his duty of local allegiance which he owed as a Dutch subject resident in British territory ceased: in other words, as he lost *de facto* the one, "the one draweth the other" and the other went. (And my friend emphasised the words "its counterpart went also.") That emphasises the point which I desire to make when I come to make my eventual submission on this point. It is not the *de facto* protection which counts, nor is it a claim to protection on a passport to which you are entitled which counts: it is the right to protection *de jure*. If the Crown's argument were correct, Sir Robert Finlay was wasting his time, because his client was quite obviously guilty even if his argument succeeded, because it would mean this: that a Dutch subject resident in British territory, who until the time of the occupation by the Boers owed allegiance, notwithstanding the fact that he was an alien, and notwithstanding the fact that Waschbank temporarily became territory outside the control of Her Majesty, the allegiance would continue and he could commit treason.

I will not trouble your Lordship again with my friend's American authority, *Carlisle and the United States*; but I jotted down, as my friend read it, that Mr. Justice Field in the passage which he quoted said in substance that the alien owes a local and temporary allegiance which continues during his residence. I think those were the words. That was 16 *Wallace*, 147, at page 154. I do not think there are any other cases that I need trouble your Lordship with. I am not going to refer to the *Stepney Election Petition*, because, although the Attorney-General was good enough to say that it contained a passage which was against him, that passage is not nearly so strong as the passages I have read to your Lordship and particularly the passage from *Blackstone*.

Your Lordship asked us if we could give your Lordship any assistance in connection with passports. My professional client, Mr. Head, and I have both endeavoured to do so. Mr. Head has been particularly industrious in the matter, and I think the only thing we can find is this, that there is an article called "The Passport System," by N. W. Sibley, in the *Journal of Comparative Legislation*, new series, volume 7. I think it was written in 1906, which was the year after the Brailsford case. I have myself found a case which I will refer to shortly, because I think it may be a little bit helpful on what I may call the passport issue. That is the case of *The King v. Ketter*, 1940, 1 *K.B.*, 787, in the Court of Appeal. Shall I read the headnote?

MR. JUSTICE TUCKER: Yes, please.

<sup>1</sup> It was, in fact, in 1603.

**MR. SLADE:** *"The appellant was born in Palestine in 1911, and until 1923 he was admittedly a Turkish subject. He lived in Palestine until 1937 when he came to England with a passport entitled 'British Passport, Palestine' and issued by the British High Commissioner in Palestine. The appellant having been convicted of offences under the Aliens Order, 1920: Held, that the appellant was an alien and had been rightly convicted, he not having become a British subject either by virtue of article 30 of the Treaty of Peace with Turkey signed at Lausanne on July 24, 1923 (which provided that Turkish subjects habitually resident in territory which, in accordance with the provisions of that treaty, was detached from Turkey should become ipso facto, in the conditions laid down by the local law, nationals of the State to which such territory was transferred) or by virtue of the Palestine Mandate which was given by the League of Nations to Great Britain on July 24, 1923, since Palestine was not transferred to and consequently was not annexed within section 27, sub-section 1, of the British Nationality and Status of Aliens Act, 1914, as amended by section 2, sub-section 6, of the British Nationality and Status of Aliens Act, 1918, by Great Britain by either the Treaty or the Mandate. Held, further, that the effect of the Palestinian Citizenship Order, 1925, was prima facie that the appellant, being a Turkish subject habitually resident in Palestine on August 1, 1925, then became a Palestinian citizen. Even if the Order, at least so far as the first paragraph was concerned, was of no force or validity because it had been made by the mandatory power and not by the administration of Palestine, who were responsible under article 7 of the Mandate, the appellant would remain a Turkish subject and not become a British subject."*

My friend the Attorney-General referred, your Lordship may remember, to certain rights of parties in British-protected territory. Palestine, no doubt, would come within that description. Of course, it is only fair to say the onus of proof that he was a British subject in this case rested upon the appellant, your Lordship will remember, under the specific terms of the Aliens Restriction Act, 1914; and my friend said that he specifically stated that such subjects would not be British subjects. I am not suggesting for one minute he has made any misstatements of the law; I am merely saying we shall now see what happened to a person coming to England—perhaps I may now borrow my friend's words—armed with what is said to be a British passport by the High Commissioner in Palestine, and, if I may use my friend's picturesque phraseology, thereby clothed with the status of a British subject. All he got was a sentence of eleven days' imprisonment and was recommended for deportation, and that conviction was confirmed. It was taken to the Court of Criminal Appeal and the judgment of the court was delivered by Mr. Justice Singleton, the Court being Mr. Justice Humphreys, Mr. Justice Singleton and Mr. Justice Lewis.

**MR. JUSTICE TUCKER:** What exactly does the case show? I follow that it shows that he did not gain much benefit from the passport, but what else does it show apart from that?

**MR. SLADE:** It shows this, does it not? According to the argument when we come to the passport question, here was a man who *de facto* having a passport, which was a British passport, was entitled to the protection of the Crown—that is what was alleged—but I am suggesting that the protection of the Crown that the passport afforded to him in this particular case was that he got sent to prison when he got over here, because in fact and in law, as it now appears, he turned out to have the status of a Turkish subject. I merely cited this case, firstly, because your Lordship asked—

**MR. JUSTICE TUCKER:** I follow now what it is.

MR. SLADE: Secondly, because Mr. Justice Singleton said this: "*At the trial at the Central Criminal Court Mr. Lester*"—he was counsel for the appellant—"based his case almost wholly on the passport issued to the appellant, which he claimed was a British passport. But it is difficult to see that this could lead the appellant to think that he was a British subject or could make him one." The argument put forward was that he became enveloped in the Union Jack and clothed with the status of a British subject. That is why I cited that case. The court held in point of fact that, although the High Commissioner had issued to this man a passport which was styled a British passport, it was not a British passport in law or in fact—I don't know which makes fact or law.

THE ATTORNEY-GENERAL: Will you read the first paragraph?

MR. SLADE: Certainly. Mr. Justice Singleton, delivering the judgment of the court, said: "*The only question before this Court is whether the appellant is an alien within the British Nationality and Status of Aliens Act, 1914. If he is an alien, it is not disputed that he committed the offences alleged. By section 27, sub-section 1, of the Act 'alien' means a person who is not a British subject, and by the same sub-section, as amended by section 2, sub-section 6, of the British Nationality and Status of Aliens Act, 1918, 'British subject' means 'a person who is a natural-born British subject or a person to whom a certificate of naturalisation has been granted or a person who has become a subject of His Majesty by reason of any annexation of territory.'*" I think I conveyed that to your Lordship, not only that, but I went so far as to make it clear that the onus lay upon the appellant here of proving that he was a British subject and it did not lie upon the Crown to prove that he was an alien. I was intending to put that point against myself.

Before I pass to my point on jurisdiction, which I submit is essentially bound up with this point of protection and allegiance, I told your Lordship I would give you the reference to the conference of the Judges. I have now got volume 46 of the *Law Quarterly Review*. I am reading from "The Parliamentary Declaration of Treason," by Professor Samuel Rezneck, at page 85. The sole point of this reference is in the hope of assisting your Lordship as to what was meant by a resolution of the Judges in 1707. Dealing with the conference of the Judges he says, "*A second case is reported by Hale, who was himself present at the conference of Judges where it arose in 1675. A number of weavers had risen in riot against the use of an improved engine-loom. The Judges divided evenly, five against five, on the question as to whether the offence constituted a levying of war under the statute of 1351 or was merely a riot. They agreed that if the Attorney-General saw fit to prosecute for treason, a special verdict might be found and the matter could then receive further consideration. Or 'according to the clause of the statute of 25 Edward III, the declarative judgment of the King and both Houses of Parliament might be had, because it was a new case and materially differed from other cases of like nature formerly resolved.'*" Neither suggestion was followed because the Prosecution proceeded against the men only on the rioting charge. Generally, however, such a suggestion was not even made. The Judges did not scruple to debate the law and to reach an agreement as to the nature of the offence either before the trial or after the trial, when a special verdict had been found. They were left with no doubts to refer to Parliament"—the statute contained power to refer debatable points to Parliament. "*There was the notorious case of Peacham in 1615, in which Bacon as Attorney-General exerted pressure upon the Judges in order to bring them to agree that the offence in question constituted treason under the statute of 1352. For a time Coke, who was Chief Justice, resisted the pressure on the ground that such 'particular and auricular taking of opinions*

was not according to the custom of the realm.' Bacon insisted that it was an obligation of the Judges to give counsel to the Crown when called upon; the manner might differ with the circumstances, although 'the ordinary course was to assemble them.' Faced with the threat that he would be left alone in his opposition, Coke gave way and added his opinion in writing to those of the other Judges. Joint conferences of all the Judges held both before and after the trial in cases of treason were a common and accepted practice in the period following the Restoration. In spite of Hale's warning they served both to advise the Crown and to interpret the general law of treason, thereby dispensing with the need of making reference to Parliament. Between 1660 and 1663, for example, the Judges met with the Government counsel a number of times, usually in Serjeants' Inn, in order to arrange for various trials involving treason. During his trial Sir Henry Vane was prepared to protest against this practice, citing Coke as his authority."

In two footnotes it says: "One of the best known sixteenth century precedents of a judicial conference held prior occurred in 1595 in the Oxford Enclosure Cases. In commenting upon this case, Sir Mathew Hale was moved to admonish the courts 'to be very wary in multiplying constructive treasons, for we know not where it will end.' He added that the decision in such cases properly belonged to Parliament, under the clause of reservation." Then it says: "The Judges of this period were able to wave aside Coke's authority with the observation that his posthumous writings contained 'many great errors'." It also refers to Coke's protest against the practice from Bacon's correspondence with James I, as reprinted in *2 State Trials*. That was extended following the Restoration in 1660, and the resolution referred to in those two books—and I think only in those two books—was in 1707.

Now I pass to the question of jurisdiction. In the submissions I am making to your Lordships now, of course I am assuming two things: First, which I think is now conceded, that the Defence has proved that the prisoner Joyce is an alien; indeed I act upon that assumption. And, secondly, as indeed each one of these counts alleges, that the treason was committed in the German realm. Indeed of course, if it could possibly have been said to be constructively committed in this country, one would have to consider the question of limitation of prosecutions in treason which I have explained, but it is not even suggested; each one of the counts alleges, your Lordship remembers, "in the German realm." A succinct method of referring your Lordship to what I respectfully submit is the law on this point is by referring to the ninth volume of the second edition of *Halsbury's Laws of England*, at page 55, section 3: "The limits of criminal jurisdiction. English courts exercise criminal jurisdiction in respect of acts done by all persons, whether British subjects or aliens, (1) within the territory of England; (2) on board a British ship on the high seas or in foreign rivers below bridges, where the tide ebbs and flows, and where great ships generally go; (3) on the open sea within the territorial waters of the King's dominions; also in respect of certain acts done by British subjects on land abroad or on any ship on the high seas which is not British. English courts do not exercise criminal jurisdiction in respect of acts of foreigners abroad or at sea, except within the territorial waters of the King's dominions, or on British ships and in the case of piracy *jure gentium*, which is triable and punishable everywhere, no matter where or by whom it is committed. Jurisdiction in respect of acts committed in England is the jurisdiction of the Common Law. Jurisdiction in respect of acts committed on board a British ship in the places above referred to is the Admiralty jurisdiction. Jurisdiction in respect of acts committed elsewhere is derived from statute."

Now we come to Common Law jurisdiction: "At Common Law the exercise of criminal jurisdiction is limited to crimes committed within the

land of England with its ports and harbours, bays, gulfs and estuaries and so much of the outer coast as extends to low water mark. The courts of Common Law have always exercised jurisdiction over all persons who committed crimes within these limits, whether such persons were subjects of the King or resident aliens or mere casual and temporary alien visitors. In respect of acts done outside those limits there was no jurisdiction at Common Law." I will now pass from Admiralty jurisdiction, which is immaterial, and come to page 62. We now come to the alteration of the Common Law by statute. "*Jurisdiction in respect of crimes committed out of England. Treasons committed by a British subject out of England, and oppressions committed out of England by colonial governors, are triable in the King's Bench Division of the High Court of Justice, or before such commissioners and in such shire of the realm as may be assigned by the King's commission.*" Your Lordship will see amongst the references to that authority is the statute in note (b), which is in fact the Treason Act of 1543, 35 Henry VIII, c.2. I will refer your Lordship to that. *Halsbury* then proceeds—

MR. JUSTICE TUCKER: Are you going to refer me to that ?

MR. SLADE: Yes, and I am also going to refer your Lordship to a very recent book on the point and also the judgment of the court in the Jameson case as to the construction of statutes. All statutes must be construed as being limited to trying offences committed within British jurisdiction in dealing with an alien. It would be an affront to the sovereign power of another country for us to arrogate to ourselves the right to try, for example, a Frenchman for having committed a murder in France, even if we could get hold of him. We have a right to try a murder committed by a British subject in France. My Lord, if *Halsbury* is right—I will refer your Lordship to other authorities—if I may read one more section, I think it makes it, if it is right, conclusive. I will not trouble your Lordship with the various acts, Perjury, etc., or the Merchant Shipping Act. I will refer to the Foreign Enlistment Act because the Jameson case dealt with that. That is at the foot of page 63: "*The Foreign Enlistment Act, 1870, extends to all the dominions of the King, including the adjacent territorial waters. Any subject of the King who acts in contravention of the statute anywhere, or any foreigner temporarily resident in any part of the King's dominions*"—he does say "within the King's dominions"—"*commits an offence for which he may be tried in the place where the offence was wholly or partly committed, if such place is in the King's dominions, or in any place in the King's dominions where the offender may be.*" Paragraph 80 is the passage: "*Generally speaking, except in the case of piracy jure gentium, no person who is not a subject of the King can be tried in England in respect of any act which he commits outside the King's dominions.*"

MR. JUSTICE TUCKER: That would depend upon the construction of the particular statute in each case.

MR. SLADE: I do not dispute that Parliament can do anything. I do not dispute that Parliament could pass an Act of Parliament to-morrow allowing the courts of this country to try a Chinese for bigamy committed in China or a Chinese for bigamy committed in Sweden. As to the construction of the Acts of Parliament I have brought *The Queen v. Jameson*, 1896, 2 *Queen's Bench*, 425.

MR. JUSTICE TUCKER: Yes. Will you read it, Mr. Slade ?

MR. SLADE: My Lord, "*By section 11 of the Foreign Enlistment Act, 1870, 'If any person within the limits of Her Majesty's dominions'*"—I would rather like your Lordship to have this because your Lordship sees: "*If*

any person within the limits of Her Majesty's dominions, and without the licence of Her Majesty, prepares or fits out any naval or military expedition to proceed against the dominions of any friendly state, the following consequences shall ensue: (1) 'Every person engaged in such preparation or fitting out, or assisting therein, or employed in any capacity in such expedition, shall be guilty of an offence.' Held, that if there be an unlawful preparation of an expedition by some person within Her Majesty's dominions, any British subject who assists in such preparation will be guilty of an offence even though he renders the assistance from a place outside Her Majesty's dominions. By section 2 of the said Act 'This Act shall extend to all the dominions of Her Majesty.' And by section 3 'This Act shall come into operation in the United Kingdom immediately on the passing thereof and shall be proclaimed in every British possession by the governor thereof as soon as may be after he receives notice of this Act, and shall come into operation in that British possession on the day of such proclamation.' An indictment alleged that 'within the limits of Her Majesty's dominions and after the coming into operation therein of the Act called the Foreign Enlistment Act, 1870,' certain offences against the said Act were committed: Held, that the indictment sufficiently alleged the Act to have been in operation in that part of Her Majesty's dominions in which the alleged offences were committed."

The passage is, however, in the judgment of the Court of Crown Cases Reserved, and I am quoting from the judgment of Lord Chief Justice Russell of Killowen at page 430: "If in the result it be necessary in order to show that the Act was in operation in the place where the expedition was prepared, to prove that the Act was duly proclaimed there, failure on the part of the Crown to prove such proclamation will be fatal. But it is not a matter that need be averred in the indictment. It is enough for the purposes of the indictment to allege that the Act was in fact in operation in the place in question. I pass on to the objections taken to the ninth and subsequent counts which I may deal with briefly. But first I should like to make some observations with regard to the rules of construction applicable to statutes such as this. It may be said generally that the area within which a statute is to operate and the persons against whom it is to operate are to be gathered from the language and purview of the particular statute." That is what your Lordship put to me. "But there may be suggested some general rules, for instance, if there be nothing which points to a contrary intention, the statute will be taken to apply only to the United Kingdom"—now this is the important part—"but whether it be confined in its operation to the United Kingdom or whether, as is the case here, it be applied to the whole of the Queen's dominions, it will be taken to apply to all the persons in the United Kingdom or in the Queen's dominions, as the case may be, including foreigners who during their residence there owe temporary allegiance to Her Majesty. And according to its context it may be taken to apply to the Queen's subjects everywhere, whether within the Queen's dominions or without." These are the vital words: "One other general canon of construction is this, that, if any construction otherwise be possible, an Act will not be construed as applying to foreigners in respect to acts done by them outside the dominions of the sovereign power enacting." The Lord Chief Justice goes on: "That is a rule based on international law by which one sovereign power is bound to respect the subjects and the rights of all other sovereign powers outside its own territory." Of course, Sir Starr Jameson was a British subject. I was reading from page 430.

So as to bring the law right up to date I propose to read from an essay by Professor Stallybrass published in 1945, and then I will refer to the Treason Act of 1543. I really adopt this as part of my argument. The book is *The Modern Approach to Criminal Law* in the series of *English*

*Studies in Criminal Science.* Professor Stallybrass<sup>1</sup> says, "*Limitation of Jurisdiction by Territory:—By English common law crime is essentially territorial. 'All crime is local. The jurisdiction over the crime belongs to the country where the crime is committed'.*" That is from the case of *Macleod v. The Attorney-General of New South Wales*. "*All jurisdiction is properly territorial.*" Then there is a Latin quotation. "*Such is the fixed rule of common law. No criminal proceedings can be taken in this country for a crime committed abroad, but over crimes committed in England the common-law courts have jurisdiction even if committed by aliens only temporarily resident in this country, including perhaps prisoners of war. Such persons are treated as owing a temporary allegiance to the Crown. But no such doctrine can apply to an alien enemy who is not yet a prisoner of war. Protection and allegiance are co-extensive*"—again saying it is the protection of the law. "*But allegiance as the sole foundation of jurisdiction has perforce been in fact abandoned. But statutes have made some inroads upon the rigidity of this common-law rule. Statutes have in certain cases given English courts jurisdiction to deal with crimes committed by British subjects abroad. The chief of these offences are treason by a statute of 1543*"—the next one goes on to murder, bigamy and offences, the person and so on. May I just repeat those words: "*Crimes committed by British subjects abroad . . . the chief of these offences are treason by a statute of 1543;*"

MR. JUSTICE TUCKER: He does not say anything about crimes committed by foreigners abroad. There are some statutes which deal with that.

MR. SLADE: I don't know of one, my Lord.

MR. JUSTICE TUCKER: Doesn't the Explosives Act deal with that?

MR. SLADE: *Halsbury*, dealing with the Explosive Substances Act, 1883, paragraph 72, page 63, says this: "*A subject of the King is triable in England, if without the King's dominions he unlawfully and maliciously does any act with intent to cause by an explosive substance an explosion.*"

MR. JUSTICE TUCKER: Yes, it was the case where express provision was made for doing an act outside the country which takes effect elsewhere.

MR. SLADE: Yes, my Lord; it would be quite inconsistent with what *Halsbury* has said, except in the case of piracy. The Treason Act, 1543, of course, has to be read in the light of the canon of construction which Lord Chief Justice Russell, I think it was, mentioned in *Jameson*. I have not looked to see whether it was repealed by the Treason Act of 1945. I assume, of course, against myself it was not.

MR. JUSTICE TUCKER: Where is that to be found?

MR. SLADE: The Treason Act 1945?

MR. JUSTICE TUCKER: No, 1543.

MR. SLADE: The most convenient place, I think, is *Halsbury's Statutes*, volume 4. My friend tells me it is in the latest edition of *Archbold* at page 1058. I myself prefer to look at the statute, because it is not always easy to find what is quotation from the statute and what is *Archbold*. It is entitled '*An Act concerning the trial of treasons committed out of the King's Majesty's dominions.*' "*For obviating doubts as the trial of treasons and misprisons of treason committed abroad. Forasmuch as some doubts and questions have been moved that certain kinds of treasons, misprisons and concealments of the treason done, perpetrated or committed out of the King's Majesty's realm of England cannot or may by the Common Laws of this realm be inquired of, heard and determined within this said realm of England, for a plain remedy, order and declaration therein to be had and made, be it enacted by the authority of this present Parliament that: All manner of*

<sup>1</sup> Mr. W. T. S. Stallybrass, Principal of Brasenose College, Oxford; Reader in Criminal Law and Procedure in the University of Oxford.



*offences being already made, declared or hereafter to be made or declared, by any the laws and statutes of this realm, to be treasons, misprisions of treason or concealments of treasons, and done, perpetrated or committed or hereafter to be done, perpetrated or committed by any person or persons out of this realm of England shall be from henceforth inquired of, heard and determined before the King's Justices of his bench for pleas to be holden before himself, by good and lawful men of the same shire where the said bench shall sit and be kept or else before such commissioners and in such shire of the realm as shall be assigned by the King's Majesty's commission, and by good and lawful men of the same shire in like manner and form to all intents and purposes as if any such treasons, misprisions of treasons or concealments of treasons had been done, perpetrated and committed within the same shire where they shall be so inquired of, heard and determined as is aforesaid."* And then: "*Peers shall be tried by peers. Provided always that, if any of the peers of this realm shall happen to be indicted of any such treasons or other offences aforesaid by authority of this Act, that then after such indictment they shall have their trial by their peers in such like manner and form as hath been heretofore accustomed."* My case refers to *The Queen v. Lynch* and *The King v. Casement*.

MR. JUSTICE TUCKER: What do you say about that?

MR. SLADE: I say that that, of course, must be read to apply only so far as it applies to aliens at all, first of all. I do not concede that it applies to aliens at all; but, assuming that it applies to aliens at all, it can only apply to aliens in respect of offences or treasons committed within the King's dominions upon the canon of construction put forward by the learned Lord Chief Justice.

MR. JUSTICE TUCKER: I don't quite follow what you say. I follow the canon of construction. That would apply to any Act of Parliament; that would apply to the Act of 1351, which is what we are dealing with. I don't quite follow how this carries the matter any farther.

MR. SLADE: I don't think it does. It may be said that the 1351 statute enacted nothing at all, but was merely declaratory of the existing law.

MR. JUSTICE TUCKER: It really provides how people who offend against that Act outside the realm are to be tried.

MR. SLADE: Quite, my Lord, it is purely procedure, and is merely expressed to be passed to resolve doubts with regard to procedure. One could not in any event treat a procedural statute as enacting the law. It really in my respectful submission requires no argument at all, because we know in civil cases it is an affront or considered to be an affront to the sovereignty of another realm to issue a writ upon a foreign subject in that realm, because it says that "His Majesty commands you within eight days." You can get leave to serve a writ upon a British subject in the British dominions, but you have to serve notice of writ.

MR. JUSTICE TUCKER: I think that is rather different; that is where you are going into the foreign country and doing something there. If a man commits an offence abroad you cannot go and arrest him there; you have got to wait until he comes here. It is rather different.

MR. SLADE: Yes. Joyce was arrested abroad, but I am not on that point at the moment. I am merely saying that it would be quite inconsistent with the ordinary comity of nations for one nation to arrogate to itself the right to try subjects of that nation for acts committed while they were within the territory of that nation. If that were not so, anyone, to take a fantastic case, could take an American subject who was paying a visit over here and try him over here for a murder which it was alleged he had committed in New York.

MR. JUSTICE TUCKER: Unless the statute made it clear.

MR. SLADE: I was only emphasising that, as your Lordship says fairly enough, unless the statute provides; but I was going to say there was every ratio for the rule laid down by the learned Chief Justice, because that is exactly what one would expect after dealing with whether the statute applies to British subjects generally or to the United Kingdom or to the Dominions. He then says, even if that construction is possible or even probable, you must not put it on the ground of international law.

That is all I desire to say to your Lordship, subject to this one final point. If your Lordship should be against me upon the pure point of law and on the point of law with regard to jurisdiction, there still arises the point before I address the jury—perhaps your Lordship would assist me because my friend might want to reply—as to whether your Lordship is going to leave any special question to the jury for a special verdict, or whether your Lordship is going to direct the jury.

MR. JUSTICE TUCKER: I have not yet decided, Mr. Slade, whether there is anything for the jury at all.

MR. SLADE: Those are all the observations I have to make.

MR. JUSTICE TUCKER: Yes, Mr. Attorney?

THE ATTORNEY-GENERAL: My Lord, may I first of all deal with the point which is present to my mind with regard to which my learned friend last dealt—the point of jurisdiction. In my submission that point really begs the whole question in this case, the question whether or not the prisoner was under a duty of allegiance to the Crown. If one looks at the statute, and in my submission it can not be doubted that it is within the power of Parliament to pass a statute creating criminal offences in foreigners abroad—if one looks at the original statutes of treasons, it is clear on that statute, as construed in the Casement case, that it does apply to offences committed outside the realm. That was, of course, the great argument in the Casement case, as your Lordship will remember. It was contended in that case, although no question of nationality as part of the treason arose, that the statute was limited to offences committed within the realm and after considerable argument in the trial it was held that it applied to offences wherever they were committed. The statute itself, as to the persons who might commit the offence of treason, appears to cover anybody, British subjects or foreigners, any person. The effect of the cases has been to qualify the statute to this extent, that it only covers those persons who are under a duty of allegiance to the Crown. One is then thrown back to what is, in my submission, one of the primary questions in this case: Was the prisoner under a duty of allegiance to the Crown? If one accepts the view that the Statute of Treasons applies to acts committed outside the realm and applies to persons who owe a duty of allegiance to the Crown, then in my submission the procedural act which your Lordship has, the Act of 1543, clearly brings to an end any doubt that might have hitherto existed in regard to the jurisdiction to try a foreigner: it makes it quite clear in regard to all persons, whether they be foreigners or not, that treasons committed outside the realm are triable in the King's courts. My learned friend says that so to hold would be an affront to the comity of nations. In my submission, no. The exercise of what is well recognised in international law by the term "protective jurisdiction" is accepted on the part of all nations.

May I refer on that to *Hall on International Law*, (1944). At page 261 there is this paragraph: "*The municipal law of the larger number of European countries enables the tribunals of the state to take cognizance of crimes committed by foreigners in foreign jurisdiction. Sometimes their competence is limited to cases in which the crime has been directed against the safety or high prerogatives of the state inflicting punishment, but it is some-*

*times extended over a greater or less number of crimes directed against individuals,"* and then he goes on to cite a great number of instances of foreign countries exercising an extra-territorial, generally protective jurisdiction of that kind. It is put in *Roscoe*—

MR. JUSTICE TUCKER: I am not quite sure that I have the same edition as yours. What edition of *Hall* are you reading from?

THE ATTORNEY-GENERAL: The 8th edition, 1924.

MR. JUSTICE TUCKER: What is the heading of the passage you read?

THE ATTORNEY-GENERAL: "*Sovereignty in relation to the territory of the State.*"

MR. JUSTICE TUCKER: I want to make sure I have got the right chapter.

THE ATTORNEY-GENERAL: It is Part 2 of Chapter 4 in my edition.

MR. JUSTICE TUCKER: "*Sovereignty in relation to the territory of the State*"—is that it?

THE ATTORNEY-GENERAL: Yes, my Lord; I have paragraph 62.

MR. JUSTICE TUCKER: What is your side-note?

THE ATTORNEY-GENERAL: My side-note is "*Crimes committed by foreigners in territory foreign to the State exercising jurisdiction.*" The international validity of statutes of this kind is a matter about which one might no doubt argue, but to say that the existence of such statutes is an affront to the comity of nations, in my submission, is quite wrong. I think it is right to say that there is hardly a state in the world which does not in fact exercise a protective jurisdiction over foreigners in respect of crimes committed outside its own territory.

MR. JUSTICE TUCKER: What do you call "protective jurisdiction?"

THE ATTORNEY-GENERAL: I am limiting the jurisdiction and I am limiting the principle of protective jurisdiction in this sense. It is recognised that states are entitled to make laws affecting foreigners even in respect of offences committed outside their own territory so far as such laws are reasonably necessary for their own protection. That is why, my Lord, it is limited very often to matters, as *Hall* puts it—I have not the exact phrase in my mind now—affecting the safety or high prerogatives of the state, of which of course treason is pre-eminently one.

My Lord, there is a very short passage in *Roscoe* at page 213, referring to 1 *Pitt Cobbett*, 219, "*Jurisdiction over aliens abroad is 'usually only in virtue of'*"—

MR. JUSTICE TUCKER: What is the heading?

THE ATTORNEY-GENERAL: It is under the heading of "*Jurisdiction and Venue.*" and it is page 213 in my copy: "*Jurisdiction over aliens abroad is 'usually only in virtue of some special connection, such as service within three months on board a British vessel.'*" My Lord, here, of course, the special connection which makes this alien subject to the jurisdiction of the Court is, in my submission, the connection of allegiance. That is why I say with respect, the submission put by my learned friend seems really to beg the real question in this case, which is the question of allegiance. If there is allegiance, then under the Statute of Treasons and the statute of 35 Henry VIII there is jurisdiction to try. My learned friend referred to the case of *Keyn*, but that was a very different case. That was a case of a Common Law offence, where the matter for decision was whether a death which occurred on a foreign ship could be said to have taken place within the territorial jurisdiction of the British courts, and it was held that it was not within the territorial jurisdiction. It was a very different case, a Common Law offence: here is a statutory offence, and although no doubt the general canon of construction would be not to give extra-territorial effect to the statute either in relation to foreigners or to British subjects, one has to look at the language and purpose of each particular statute to see what Parliament intended in each particular case.

Here, in my submission, it is perfectly clear on the Casement case that the effect of the Statute of Treasons is of an extra-territorial kind. Then, once one sees it is of an extra-territorial kind, one has to ascertain: Is the particular defendant who is alleged to have committed an offence under it one of that class of persons who can commit offences under the Act, and is that class of persons a class of persons, whether British subjects or not, who owe allegiance to the British Crown? On the opposite page of *Archbold* on which the statute of Henry VIII is set out, on page 1059, there is the statute of Edward VI in regard to treasons abroad, which provides that "*If any of the King's subjects, denizens or other, do commit or practise out of the limits of this realm in any outward part any of the offences which by this Act are made or heretofore now standing in force have been made treason, that then such treasons*" shall be triable as if they had been committed within the realm. Then your Lordship sees the note: "*This enactment has not been specifically repealed, but there is no trace in the text-books or in reported cases or in those of which the record is preserved in the Record Office, of the trial of any foreign treason by any other procedure than that provided by 35 Henry VIII.*"

MR. SLADE: That has been repealed by the Treason Act of 1945.

THE ATTORNEY-GENERAL: I am obliged; I am told it is a statute which is now repealed. Even so it was until 1945 a statute and I will draw attention to the note. Apparently that statute, although it refers to foreign treasons, has never been in fact relied upon, foreign treasons always having been dealt with under the statute of Henry VIII. I would submit to your Lordship that there can be no doubt on the construction of the Statute of Treasons that it embraces offences committed anywhere within the realm or outside it, in the words of the statute, by persons who owe allegiance; and that so to construe it, far from being an affront to the comity of nations or inconsistent with the accepted principles of international law, is in accordance with the accepted practice of all countries in the exercise of their protective jurisdiction.

Going back to the beginning of my learned friend's argument, my learned friend said, that with the exception of the passages in *Foster* and *East*, there was no authority for the proposition that the non-resident alien was under any duty of allegiance. My Lord, the no-authority proposition is often used and it is right that proper weight should be attached to it; but, if it were always accepted as a ground for a negative decision, our laws would have been quite incapable of expanding and broadening down from precedent to precedent in a way which is, of course, characteristic of the Common Law.

If there is no precedent for this case, it is simply because in no previous case have comparable circumstances arisen. The passport is a document of comparatively modern growth. There have been very few cases—there has been one, certainly—of treason since the introduction of passports; indeed passports only came into general use in the course of this century, and in the course of that time there has, as far as I can recall, been one case, and one only, under the Treason Act. *Foster* and *East* are in my submission powerful authorities for the view that the essential basis of allegiance is the right to protection, especially when one remembers that there is excluded from the obligation of allegiance the possibly resident but the non-protected alien. It is perfectly true, as my friend says in the case of all the books that have been cited, that protection is related to residence; but in my submission the only significance to be attached to that is that in those days, at the time of those decisions or those expressions of opinion as to the state of the law, residence was in fact the only way in which the Crown could effectually take a person under the protection

of the sovereign and the protection of the sovereign originally depended on executive action rather than on judicial action. The alien was put under the King's peace. In the course of the growth of our Common Law that came to mean 'under the jurisdiction and protection of the King's laws as administered in the King's Courts'; but in my submission it is merely an extension of that principle to say that the alien, who continues under the executive protection of the King when he goes with a British passport into a foreign land, is in the same position as the resident alien was in the days of *Calvin's case* and of *Coke* and of *Foster*. Both the protection of the ordinary territorial law of the country and the protection of the King's diplomatic representative and the King's armed forces have their source, have their *fons et origo* in the same place, in the sovereign power of the King ensuring in his own control the maintenance of the King's peace through the judicial machinery of the country, and ensuring outside his control, so far as his force enables him so to do, the protection of those he takes under his protection against any invasion of their rights by a foreign power.

My friend placed considerable reliance on the case to which at the beginning I drew your Lordship's attention of *Johnstone and Pedlar*, and he said in relation to that case, and indeed in relation to one or two other authorities, notably, I think, Blackstone, to which I referred your Lordship, that either Lord Phillimore must be wrong or the Crown's contention in this case must be wrong. But, my Lord, not so. In my submission there is not a word in any part of the *Johnstone and Pedlar* case, in any one of the opinions in that case, which, properly read, not too narrowly interpreted, is inconsistent with the submission which is being made on behalf of the Crown in this case. It is true that that referred to residence, it is true that Blackstone in the passage that has been quoted refers to the allegiance ceasing when the alien transfers himself from this country; but one has got to see what is meant by residence and what is meant by transfer in that context, and one has, in my submission, to remember that in those days—I think in Blackstone's day and in the early days in which this matter was discussed—residence in general was a more permanent matter than it may be in more modern times. Travel was not easy; communication was not easy; mere transient visits were not so common; and in the ordinary case I suppose an alien who left the country was likely to be leaving it permanently and for good.

My Lord, as I understood my learned friend's argument—I am not at all sure that I am doing justice to him on this point—my learned friend rather relied on the *Johnstone and Pedlar* case as being some authority for the proposition that the very commission of an act of treason put an end to the allegiance, put an end to the right to protection, and therefore put an end to the allegiance. He was referring to the words that I used in that case and adopted in that case from Lord Coke: "protection draws allegiance and allegiance draws protection"; and therefore, if allegiance goes, he said, protection goes. In other words, that argument is to say this: that the moment a person who, being under the protection of the Crown and consequently under a duty of allegiance to the Crown, commits a treason, his allegiance comes to an end and he is not triable for it. Lord Sumner's opinion in the *Johnstone and Pedlar* case is, in my submission, exactly to the opposite effect. He is discussing the doctrine of mutuality there and he is saying that, once protection arises, it does not cease merely because the person who owes a duty of allegiance because of its existence commits treason. Once the protection arises, it continues until by some positive act of election on the part of the Crown it is withdrawn. No doubt, when the person who has been placed under the protection of the



The whole of the Declaration and Marginal Particulars should be in the Applicant's own handwriting

This space is reserved for official use.

✱ Surname in Block Capitals.

Declaration to be made



ISSUE

BRITISH EMPIRE  
EUROPE ETC.

- 5 JUL 1933

(a) I am a male and female, where  
single, when filled in the form.

(b) I am a male and female, where  
single, when filled in the form.

(c) I am a male and female, where  
single, when filled in the form.

(d) I am a male and female, where  
single, when filled in the form.

(e) I am a male and female, where  
single, when filled in the form.

(f) I am a male and female, where  
single, when filled in the form.

(g) I am a male and female, where  
single, when filled in the form.

(h) I am a male and female, where  
single, when filled in the form.

(i) I am a male and female, where  
single, when filled in the form.

(j) I am a male and female, where  
single, when filled in the form.

(k) I am a male and female, where  
single, when filled in the form.

(l) I am a male and female, where  
single, when filled in the form.

(m) I am a male and female, where  
single, when filled in the form.

(n) I am a male and female, where  
single, when filled in the form.

(o) I am a male and female, where  
single, when filled in the form.

(On the case of holder under the age of 16 years, the parent or guardian to be filled in)

(a) I am a male and female, where  
single, when filled in the form.

(b) I am a male and female, where  
single, when filled in the form.

(c) I am a male and female, where  
single, when filled in the form.

(d) I am a male and female, where  
single, when filled in the form.

(e) I am a male and female, where  
single, when filled in the form.

(f) I am a male and female, where  
single, when filled in the form.

(g) I am a male and female, where  
single, when filled in the form.

(h) I am a male and female, where  
single, when filled in the form.

(i) I am a male and female, where  
single, when filled in the form.

(j) I am a male and female, where  
single, when filled in the form.

(k) I am a male and female, where  
single, when filled in the form.

(l) I am a male and female, where  
single, when filled in the form.

(m) I am a male and female, where  
single, when filled in the form.

(n) I am a male and female, where  
single, when filled in the form.

(o) I am a male and female, where  
single, when filled in the form.

(p) I am a male and female, where  
single, when filled in the form.

(q) I am a male and female, where  
single, when filled in the form.

(r) I am a male and female, where  
single, when filled in the form.

(s) I am a male and female, where  
single, when filled in the form.

(t) I am a male and female, where  
single, when filled in the form.

(u) I am a male and female, where  
single, when filled in the form.

(v) I am a male and female, where  
single, when filled in the form.

(w) I am a male and female, where  
single, when filled in the form.

(x) I am a male and female, where  
single, when filled in the form.

(y) I am a male and female, where  
single, when filled in the form.

(z) I am a male and female, where  
single, when filled in the form.

(aa) I am a male and female, where  
single, when filled in the form.

(ab) I am a male and female, where  
single, when filled in the form.

(ac) I am a male and female, where  
single, when filled in the form.

(ad) I am a male and female, where  
single, when filled in the form.

(ae) I am a male and female, where  
single, when filled in the form.

(af) I am a male and female, where  
single, when filled in the form.

(ag) I am a male and female, where  
single, when filled in the form.

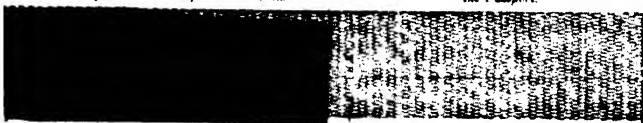
(ah) I am a male and female, where  
single, when filled in the form.

CAUTION

The attention of persons who  
are asked to sign this declaration  
is specially called to the fact that  
it can only be signed from personal  
knowledge of the applicant  
and not from information  
obtained from other persons.

Sign your name on the pink slip, which will be detached  
and affixed to the Passport when issued.

Specimen signature of wife (it to be enclosed in  
the Passport).



Applicant  
warned that  
in their resp  
the consequ

JOYCE'S PASSPOR

FOREIGN OFFICE  
5-JUL 1933

**Applicant for Passport.**

rate of security for the passport should be made by the applicant upon application to the Passport Office.

4<sup>th</sup> July 1933

oy CE

E. 19, London hereby declare that I am  
other name: Birthplace of Applicant's birth to follow

Birth

24<sup>th</sup> day of April 1906

to the nearest place of residence of the applicant

to the nearest place of residence of the applicant

to the nearest place of residence of the applicant

to the nearest place of residence of the applicant

to the nearest place of residence of the applicant

to the nearest place of residence of the applicant

to the nearest place of residence of the applicant

William Gies

to the nearest place of residence of the applicant

on my personal knowledge of the applicant

I have known the applicant for 5 years

4/1/33

to the nearest place of residence of the applicant

**IMPORTANT.**

Persons recommending them, are  
of the statements contained  
variations prove to be untrue,  
may be serious.

**Description of Applicant**

125943

Age 27

Private Tutor

Married

41, Fargher Rd, Ld. S.E. 19.

Place of birth Galway, Ireland

Date of birth 24/4/06

Height 5 ft 6 1/2 inches

Complexion Blue

Hair Fair

Scars on right cheek

Change of name or married name (if blank)

**CHANGE OF NAME.**

Change has been changed by Court Act or otherwise (if blank)

Change of name the word "None" may

NONE

Signature

**Description of wife of Applicant, if to be included on the Passport**

to the nearest place of residence of the applicant

Children under the age of 16 to be included on this Passport.

7/36





Crown and owes the corresponding duty of allegiance commits treason, it is open to the Crown to withdraw the protection; but unless the Crown so elects to do the protection continues and the traitor remains under the protection of the Crown even when he is being tried for treason.

There is nothing to prevent a traitor who has committed one treason, not exactly at the same time, committing another treason: he remains under the protection and consequently he remains under the duty of allegiance. It was in that sense, in my submission, that Lord Sumner was attacking the doctrine of mutuality: allegiance draws protection, protection draws allegiance. The relationship having arisen it cannot be terminated by unilateral action on the part of the subject who is taken under the protection of the Crown.

Then my learned friend said in terms that the Crown had no jurisdiction to issue a passport to an American subject. My Lord, in passing I might say this—and I think it is, for reasons which will occur to your Lordship, desirable to say it—that, although at the time material to the issue of a passport this man was an American subject, the evidence before the court at the moment as to his nationality is that he is a German subject, but acquired German nationality at a date before America came into the story, and his present position, of course, is that he is not an American but a German subject.

MR. SLADE: My Lord, I was going to say it would be a matter of German law.

MR. JUSTICE TUCKER: For the moment it seems to me that all that has been established is that he has never been a British subject, with the fact that he has stated that he became a naturalised German.

MR. SLADE: The form of the indictment is "*purported to become naturalised.*"

THE ATTORNEY-GENERAL: I am relying on his own statement and on the fact that he had a German passport. There is no authority whatever for the proposition that the Crown has no jurisdiction to issue a passport to an American subject, and in my submission it is clearly wrong. It is done, I will not say every day, but with considerable frequency.

MR. JUSTICE TUCKER: I have had no evidence about it, Mr. Attorney. As far as my researches show, passports, I understand, are issued as part of the prerogative of the Crown, and I suppose that under that prerogative the Crown issues a passport to whomever it likes; but of course it is unthinkable that the Crown would issue a British passport to an American citizen describing him as a British citizen.

THE ATTORNEY-GENERAL: In practice that would undoubtedly be the position, but not always; because the position of dual nationality is well recognised and it is particularly recognised in the case of America. There is no evidence of this, but it is I think a matter of law. An American woman who marries a British subject acquires British nationality and is thereby entitled to a British passport, but she is still entitled to an American passport because she does not lose her American nationality.

MR. JUSTICE TUCKER: She gets a British passport as a British subject by international law.

THE ATTORNEY-GENERAL: Yes, my Lord, but the sole fact that a person has another status is no reason why the British Crown cannot grant a British passport. If my friend had put it on the other basis, that the Crown had no jurisdiction to grant a British passport to a person who is not a British subject, then, if I may say so with respect, he might have been on a little stronger ground. But, even so, my submission is that it is quite clear that such a proposition would have been wrong; indeed the very application-form which is in evidence in this case refers not only to British subjects and to naturalised subjects but to British-protected subjects; and a British passport can be issued and is issued to persons, whether they be British

subjects or not, whom the Crown in the exercise of its prerogative powers thinks right to protect. My learned friend referred to *Ketter's case*, I think it was, in which a passport had been issued not by the British Crown or by the Secretary of State but by the Consular officials of Palestine; and he placed some reliance upon that case. My Lord, there is another case of Markwald which goes even further perhaps in the direction in which my friend wanted to go, but it goes no way at all for the purposes of this case. *Ketter's case* and *Markwald's case* both turn on the construction of the British Nationality and Status of Aliens Act. Under the Act everybody is an alien who is not a British-born or naturalised British subject. *Markwald's case* was a case which dealt with a person who had a certificate of naturalisation granted to him in Australia and it was held none the less that he was an alien in this country, because the British Nationality and Status of Aliens Act, in defining British subjects and including within the scope of the term the naturalised subject, referred only to persons who were naturalised in accordance with the provisions of that Act; and it was held that that did not embrace a person naturalised by the provisions of an Australian Act. It was a local naturalisation which did not extend to this country. Both those cases are very narrow decisions only covering the construction of the 1914 Act.

My learned friend gave the rather curious hypothetical case of a passport granted, whether by mistake or fraud or not, to a person who was not a British subject and who found himself in conflict with the authorities in Spain, and he suggested to your Lordship that a Spanish national might have gone to a British Consul and impeached the authority of the passport, and the Consul would have said, "Oh, very well, we will tear the passport up." Your Lordship will probably think that no consular or other official would have any kind of authority to tear up the protection of a command of His Majesty that a particular person was to be accorded the privileges of a British subject or the privilege of protection by British consular officials. It is a situation which is discussed in the books on international law; it is recognised by foreign powers. One might produce evidence tending to show that a passport had been secured by fraud or by mistake, but it is universally held that no one can impeach a passport and that the only power which can withdraw it and put an end to its effect and authority is the power which had issued it—in other words, in this country the sovereign; and, so long as this passport was in existence, not withdrawn, not countermanded, this man, whether he was an American subject, or whatever his nationality may have been, was entitled to be treated with the rights and the privileges of a person protected by a British passport. He was entitled to call on the assistance of diplomatic or consular officials, and was entitled to be regarded by foreign powers as a person clothed with the status, as I put it, of a British subject, whatever his nationality may have been.

If I may say so, with respect, I have heard nothing in my learned friend's very, if I may say so without presumption, distinguished argument in this case to lead me to withdraw from the position that I have taken up in regard to "protection." My submission as to that I made to your Lordship and I will not repeat it, but I do attach the very strongest importance to the proposition that a person who enjoys the effective protection of the British Crown is under a duty of allegiance so long as that protection continues.

Even if that proposition were wrong, the question would remain, as your Lordship suggested in the course of the argument: "What is 'residence' for the purposes of this rule?" Is it synonymous with mere presence and only with mere physical presence within the territory of the

Crown; or does it, on the other hand, approach domicile? Again, as I submit, it is right perhaps to remember the circumstances of the times when the rule as to residence was first enunciated. There are not likely to be many transient visitors, foreigners, coming to this country; they are, for the most part, likely to come for some time and likely, when they go to go permanently. Since those days travel has become very much easier. The resolution of the Judges, as stated in *Foster* and *East*, makes it quite clear that even in those days "residence" was not being construed in the narrow sense of mere presence. The man who although he was not present in the country, had left either his family or his effects in the country remained within the rule as laid down there.

My Lord, is it to be said that an alien who is resident, resident in the more permanent sense, domiciled perhaps, in this country, but who takes an aeroplane or who takes a speedboat and goes outside the territorial jurisdiction, outside the three-mile limit, or over to the Continent and there commits some act which would be treasonable if committed by a British subject, and immediately returns to this country after an absence of an hour or two, is not to be amenable to our courts in a matter of treason? If that is not right, where is the line to be drawn between the resident alien, who is properly to be deemed resident although he may not be physically present in the country at a particular moment, and the alien who has finally shaken the dust of this country off his heels?

My Lord, I would submit that the test for this purpose is that an alien can be said to depart from this country—I am using the phrase in one of the authorities; Blackstone, I think, said "transferred from this country" when he has left the country and severed those ties which bound him to the country as a subject—not as a national, but as a subject. As your Lordship of course knows, the word "subject" in this context is not synonymous with nationality. A man who has left the country and in leaving it has put an end to the ties which bound him to the country as a subject and has left it intending to leave it permanently—

MR. JUSTICE TUCKER: That is getting very near the domicile test, isn't it?

THE ATTORNEY-GENERAL: Very near domicile, my Lord.

MR. JUSTICE TUCKER: There is no trace in any of the cases that it has ever occurred to anyone on this question of domicile.

THE ATTORNEY-GENERAL: No, I respectfully agree. I am not sure that the doctrine of domicile was discussed or, indeed, that it existed at that early time.

MR. JUSTICE TUCKER: I did express the view yesterday tentatively that it might be a question for the jury as to the intent, and so forth. I am inclined to the view, and I should like your assistance on this, that it seems to me that what is essential to your case is the reliance you place on the protection afforded by a passport. If you are right about that, then it would appear to me to be a pure question of law, irrespective of the animus with which the defendant may have left the realm.

THE ATTORNEY-GENERAL: My Lord, I think I would, with respect, be inclined to put it on the two feet: one of residence, defining "residence" at the lowest in this sense, as continuing until the ties which made the resident a subject of this country had been broken, and one of the ties would be the existence of a passport. If the resident alien leaves the country, he leaves it with a passport, enabling him to return to the country; he leaves it with a passport which is issued to him for the purpose of going on a holiday, and then he continues to be resident for the purposes of the authorities. Alternatively, if not resident in that sense, he continues to be protected by the possession of the passport. Even there I am not sure that there might not be a question of fact for the jury. Would this proposition be right?

Would it be a question of fact whether or not the prisoner, being at the time a domiciled Englishman, applied for and obtained the protection of the Crown in order that he might enjoy that protection whilst temporarily travelling abroad?

MR. JUSTICE TUCKER: Well, you see, the evidence is all one way; the evidence stands uncontradicted; and it occurs to me it is a matter of law whether on that evidence the prisoner owed allegiance or not. When I say that it is uncontradicted, I am dealing merely with the actual facts. If the state of his mind, the intent with which he left the country, is an element, then that might be a matter for the jury, but I doubt whether that is an element for their consideration, having regard to the way in which you put the case.

THE ATTORNEY-GENERAL: My Lord, of course I respectfully agree that the facts are ascertained and not in dispute.

MR. JUSTICE TUCKER: Very well.

THE ATTORNEY-GENERAL: My Lord, the facts on both heads are ascertained and not in dispute, the facts as to residence and as to the ties which still remain, apart from the passport. There is evidence of the passport application-forms, as to what he states his residence to be; there is evidence as to the family; no evidence whatever as to the wife, unless one takes the statement in the 1933 application that he is married. As to whether that marriage continues or whether his wife, if he continued to be married to her, left with him at the end of August or in early September, 1939, there is no evidence.

MR. SLADE: There is evidence in Exhibit 18A, the English translation.<sup>1</sup>

MR. JUSTICE TUCKER: Anyway, I don't think we need go into that, Mr. Attorney. There is no evidence that he left his wife or children in this country.

THE ATTORNEY-GENERAL: No, my Lord, there is no evidence on that. There is evidence that he left his parents with whom, if Exhibit 36 means anything, he appears to have had close ties of sympathy in this country.

MR. JUSTICE TUCKER: What is Exhibit 36?

THE ATTORNEY-GENERAL: My Lord, I do not pretend to rely on it to any great extent, except to show that he was not completely divorced from his family associations. There is some evidence in the passport application-form and the application for its renewal that at least he had some business association with a bank, the same bank throughout the period of years preceding his departure, which might be enough to infer that he had a banking account. There is no evidence that he transferred it or transferred any property; but all those matters, as your Lordship says, are matters not in dispute, but they are before your Lordship, and I do ask your Lordship to say here that in the circumstances of this case a person who, being domiciled in this country, applies for a passport for holiday purposes does not cease to be resident in it merely because he leaves the country.

My Lord, we do not know at what date he left the country, and I say advisedly he may have left at any date between the 25th August and the 16th September; but, if there had been no war or if the war had ended more abruptly and in a different way, the presumption would be, in my submission, that he would do what presumably he had done in the case of his previous passport; he would return here. He had applied for a holiday passport and, having had his holiday, he would take up and resume his home in the country with which he had clearly all his ties and associations.

I do not think there is any other point upon which I can assist your Lordship.

<sup>1</sup> This was the certificate referred to in Mr. Salgado's evidence in the 11th paragraph on p. 56 above.

<sup>2</sup> This was the letter signed "Father" referred to by Mr. E. Q. Joyce on p. 89 above.

MR. JUSTICE TUCKER: Mr. Slade, you were asking some question ?

MR. SLADE: I was going to ask your Lordship whether you would allow me to make one observation only on one point which my friend made.

MR. JUSTICE TUCKER: Yes.

MR. SLADE: That was merely the point on which he suggested my point about jurisdiction begged the question of allegiance. In my respectful submission, they have nothing whatever in common, and it can be shown conclusively in this way: If you allege that a person has committed treason, you have got to allege that he owes allegiance, and some tribunal professes to try that question. My first point is that this tribunal has no power or jurisdiction to try that question, a totally different question. If I were wrong, then one could always obtain jurisdiction over aliens by merely alleging without proving it that they owed allegiance. That is all I desire to say upon that point.

There is one other point. My friend mentioned the case of *Casement*. Your Lordship remembers that not only was Casement a British subject, but the sole point was whether the words "adhering to the King's enemies—"

MR. JUSTICE TUCKER: "Elsewhere."

MR. SLADE: "Adhering elsewhere"—applied. I am grateful to your Lordship for allowing me to make that point.

MR. JUSTICE TUCKER: Mr. Slade, you were asking me whether I was intending to take a special verdict of some kind. I should like your views and assistance on the matter and also with regard to whether or not, assuming that I am against you on your submission, there is any question for the jury or whether it is purely a question of law for me on the facts.

MR. SLADE: My Lord, I should respectfully suggest, as your Lordship put it tentatively to the Attorney-General, that this is a pure question of law for your Lordship. I took that view yesterday. I thought we were getting into the region of domicile when we were talking about "intent."

MR. JUSTICE TUCKER: Yes, Mr. Slade, I think that is right.

THE ATTORNEY-GENERAL: My Lord, there is one other passage that I had intended to draw your Lordship's attention to, but I mislaid the book. It does not carry the matter much further. It is on this question of passports, about which there is so little authority. In the tenth Volume of the *Encyclopedia of English Law*, at page 585, this is said about passports: "*A passport is the accepted international evidence of nationality. In its usual form it certifies that the person described in it is a citizen or subject of the country by whose authority it is issued, and requests for him permission to come and go as well as lawful aid and protection. . . . The more familiar sense of the term is that of a document delivered by the Foreign Office or under its authority, requesting foreign governments to afford aid and protection to the holder.*"

Your Lordship was referred to Mr. Sibley's article. That was written in, I think, 1907. You Lordship will remember that Mr. Sibley is the joint author with Lord Birkenhead of a book on international law. In that article he drew an analogy between the ordinary passport issued to an individual and a sea pass. In that quotation that I have just read to your Lordship reference is made to that, and the case was cited of a ship which possessed a sea pass and was travelling under the flag of the State to which the pass related, and it was held in relation to such a document that the shipowner and the skipper were not allowed to impeach the validity of the pass or to say that they were not of that nationality.

MR. JUSTICE TUCKER: I shall give my ruling on these submissions which have been made at two o'clock and, if necessary, then address the jury on any issue that remains for them.

*(Adjourned for a short time.)*

MR. JUSTICE TUCKER: Mr. Attorney and Mr. Slade, I shall direct the jury on count 3 that on the 24th August, 1939, when the passport was applied for, the prisoner beyond a shadow of doubt owed allegiance to the Crown of this country, and that on the evidence given, if they accept it, nothing happened at the material time thereafter to put an end to the allegiance that he then owed. It will remain for the jury, and for the jury alone, as to whether or not at the relevant dates he adhered to the King's enemies with intent to assist the King's enemies. If both or either of you desire to address the jury on that issue, of course, now is your opportunity.

MR. SLADE: My Lord, perhaps I might ask your Lordship just this point on that ruling. Count 3, I think, says: "*by broadcasting.*" I am respectfully submitting that the only evidence capable of going to the jury is the allegation that, within one month of the outbreak of war, Joyce broadcast that Dover and Folkestone had been destroyed.

MR. JUSTICE TUCKER: Coupled with the entries in the Work Pass, I think it is, which is signed by him, which purport to show the date upon which he was taken into the employment of the German Broadcasting Corporation, and some portion of his own statement where he says the purpose for which he went to Germany.

MR. SLADE: My Lord, is not the count limited to "adhering to the King's enemies by broadcasting propaganda?"

MR. JUSTICE TUCKER: Those are all matters for the jury, Mr. Slade.

MR. SLADE: If your Lordship pleases. Then I ought to address the jury, I think, just upon the point. I shall be a very few minutes.

May it please your Lordship, members of the jury, the only point you have to consider, being directed as a matter of law that the prisoner did owe allegiance to His Majesty the King from the 24th August, 1939, and on all material dates thereafter, is whether he committed the offence with which he is charged in what has been called Count 3 of this indictment. That offence is that he adhered to the King's enemies by broadcasting propaganda on behalf of the Germans. I think the limit of the offence—I have not the date in front of me—was the 2nd July, 1940.

The only piece of evidence that I recollect being given of any broadcast of the words spoken to by Inspector Hunt, which he said he heard while he was at Folkestone at a date which he placed as being within the first month of the war: "Folkestone and Dover have been destroyed." You may remember that I challenged his evidence upon that by suggesting that he had mistaken the voice which he heard. He was quite insistent that he had made no mistake; but you will bear in mind that his evidence was that, although he had attended meetings at which Mr. Joyce had been present and said he was familiar with his voice, he had never at that time spoken to him. Therefore you have to consider, and my Lord will direct you that you have to consider, whether the Prosecution have proved beyond all reasonable doubt this one point, that it was Joyce who broadcast those words in the first month of the war.

I cannot do better than ask you to do what the Attorney-General asked you to do at the outset of his opening of this case, to put aside from yourselves prejudice altogether. As he so truly remarked, Joyce will be all forgotten after a nine days' wonder, or after some short space of time, but the way that justice is done in this country will not be forgotten. You may think that it is a tribute that, while we are now proceeding, at Belsen most of those Germans are being defended by British officers.

I can well understand a person saying, "Don't try him at all; shoot him without trial." You may think that that would be one of the best

things to do. But what I do say is: If you are going to try him, try him, and do not make a mockery of the trial. You members of the jury, have, of course, a most difficult task. Joyce has been branded as "Lord Haw-Haw"; he has been branded as a traitor. Everyone talks of him as though he were already condemned and convicted, but you are here to try whether he is guilty or not.

I have not called Joyce to give evidence. I have not contested that he broadcast the broadcasts that form the subject-matter of count 1 and count 2. I think there were various dates in 1943. In each of those cases Inspector Hunt was asked or given instructions to make a note of what he heard. He made a note, and he gave evidence of the precise things that Joyce said. Having got the precise things that he said, you can say whether he was adhering to the King's enemies or not. Subject to what my Lord may say to you in his direction, that is not what you have to consider at all. I will assume against myself that in the years 1941, 1942, 1943 and 1944 he was adhering to the King's enemies. The only point that you now have to consider is whether he was adhering to the King's enemies during the first month of the war.

"Adhering to the King's enemies" is what you heard called a mixed question of fact and law. As I suggest, the only evidence which is before you of any fact which he did which can be described as adhering to the King's enemies by broadcasting propaganda, as I have told you, was the speech he is alleged to have made. No one, of course, suggests that Inspector Hunt would go into the witness-box and say what he did not honestly believe to be true. The only question is: Is he mistaken, or, as I would rather put it, are you satisfied beyond all reasonable doubt that he could not be mistaken?

These are the points that I would ask you to bear in mind. You have heard the language that Joyce used in 1943 and 1944. It has all been given in evidence. However you may disagree with it or however you may have been amused by it, at any rate it is a reasoned statement—it is not the sort of statement which you would describe and that I describe as the grotesque statement, that in September, 1939, or may be up to the 3rd October, 1939, Folkestone and Dover had been destroyed. There were no visits of aeroplanes to this country at that time; there were no atomic bombs; there was nothing whatever to destroy Dover or Folkestone. There were no long-distance guns capable of coming from Germany to this country. The French coast was still in the hands of the French. It would have been a fantastic thing to say. It is suggested it would be a fantastic thing to say to those who were over here, but what about the British soldiers who were overseas and not here and might hear it at that time and would not know that it was untrue? Well, you are entitled to use your own recollection of matters which are common knowledge. I don't profess to remember how many British soldiers were overseas in the first month of the war. I don't profess to remember. There may have been some; there may not. I don't remember; but you will gather how likely it was that there was any great number of British soldiers overseas by the 3rd October, 1939.

Moreover, if you are going to use a man as a broadcaster throughout a war which looks like lasting some time, if you want, at any rate, to give him the verisimilitude of a person that you could listen to, give him some semblance of appearance of a man you would listen to! I should think that it would be the worst possible thing from the Germans' point of view and the worst possible thing from Joyce's point of view to start his broadcasts to the British nation, not merely with a lie—because a lie might be given, as I say, a semblance of truth—but to start his career with a lie



which was demonstrably and palpably false and which everyone must know to be false within forty-eight hours, even if they did not know it to be false at that moment. Therefore, I respectfully suggest to you, the probabilities are that he did not make that particular broadcast.

Of course, it will be said, "Well, if he did not make that particular broadcast, why didn't you put him into the witness-box to say so?" Well, members of the jury, it is not for me to disprove the case; it is for the case to be proved against me beyond all reasonable doubt. It is quite obvious that most of the relevant matters in this case Joyce is not and never has been in a position to deny. One of the most relevant matters was, of course, whether he signed the application for a passport; whether he signed the applications for renewals. Of course he did. There is no point in putting him into the witness-box to deny that.

Another point is: Did he make the broadcasts in 1943? Of course he did. I cannot put him into the witness-box to deny that. You may think that the fact that he has not attempted to go into the witness-box to deny those things, at any rate would leave some semblance of character in him in that respect. The question for you is not whether he has gone into the witness-box to deny it, but whether, as I say, the Prosecution have proved it beyond all reasonable doubt.

Now what doubt is there? Let me remind you. The detective officer had heard Joyce speak; that is to say, had heard him speak in person. He had never spoken to him, but he had heard him speak. We are now dealing, are we not, with the first occasions on which he is ever alleged to have broadcast? Voices do not sound the same when you broadcast and, at any rate, the first time you hear them when they are broadcast they do not sound the same as when you have heard them many, many times and you say: "Oh, Germany calling; that is Joyce's voice." Don't forget that, the first time you heard "Germany calling," you might not have recognised him. When you heard them for the thirtieth, fortieth or fiftieth time, the moment you heard the words, "Germany calling," you would associate them with Joyce.

What was the Inspector's evidence about that? He says, "I was in Folkestone; I don't remember which station I tuned in to; I was just turning the thing round; I heard something more than the evidence I have given, but the only thing that I can remember having heard was just the words 'Dover and Folkestone have been destroyed'." I ask you, members of the jury, to say that you are not satisfied beyond all reasonable doubt that it was Joyce who used those words on that occasion. And I ask you to say furthermore that, if you are satisfied about that, contrary to my respectful submission to you, you are still not satisfied that the saying of those words constituted adhering to the King's enemies. Every time you tell a lie to British subjects you do not adhere to the enemies of His Majesty the King. That is all he is alleged to have said.

I will only say this once more and never say it again. I am sure that, in coming to a conclusion upon the evidence, as you are sworn to do, as to whether Joyce made this broadcast in the first month of the war, you will not allow your minds to be swayed by what he did in the second month of the war and, still less, the second year, third year, fourth year or fifth year of the war.

You have now to take your minds back to the first month of the war and say whether you are satisfied of two things beyond all reasonable doubt; one, that Joyce in fact made that broadcast at all and that Inspector Hunt is not mistaken; and, two, that, if he made it, the mere broadcasting from an enemy radio station of the words "Dover and Folkestone have been destroyed" constituted adhering to the King's enemies. Of course,

if the mere broadcasting from a foreign station that, shall we say, "First Class" has won the Derby when you know that "First Class" has not won the Derby—if the mere broadcasting of that from Germany to England is adhering to the King's enemies, then, I submit, it is equally adhering to the King's enemies to say that Dover and Folkestone have been destroyed, and that is whether it is true, I suppose, or whether it is false. In my submission, you require something much more than a mere misstatement that Dover and Folkestone have been destroyed to constitute an adherence by a British subject or an alien who owes allegiance to the Crown of England to the King's enemies for the purpose of amounting to treason.

Now, members of the jury, there are only two more points, and I only propose to refer to them merely to get rid of them. My Lord reminds me that, in addition to the evidence of the actual broadcast in the first month of the war, there was a certain document, the Work Book issued to Joyce quite early on, and there were various other indications that it was the intention of the Germans to use him for the purpose of broadcasting; and his intention, I will assume against myself, was to be so used. But you do not adhere to the King's enemies merely because you intend to do so in the future; that is to say, merely because he undoubtedly adhered to the King's enemies—assuming this against myself—in 1942, 1943, 1944 and 1945, it was his intention to do so in the future. You are not concerned with that, in my respectful submission. That is no criterion whatever that he was in fact adhering to the King's enemies in the first month of the war, that is to say, September to the 3rd October, 1939; and I ask you, therefore, to say—and I ask you to judge it entirely upon the evidence and to put all considerations of hostility and of dislike away from you, remembering the serious consequences of your verdict to this man, and putting out of your minds altogether everything that happened subsequently to the first month of the war—that you are not satisfied, firstly, that he ever made a broadcast which is entirely different to any other sort of broadcast he has ever been proved to have made since (namely, a silly demonstrable lie having no significance and one which can be contradicted absolutely, and contrary to some reasoned statement of, what I may call, the Fascist view—nothing of that kind); and, secondly, that, if you are satisfied of that beyond all reasonable doubt, you are not satisfied—again solely relating to this one period during the first month of the war—that in making that remark, namely that Dover and Folkestone had been destroyed, he at that moment—never mind what he did thereafter, but at that moment—adhered to the King's enemies.

THE ATTORNEY-GENERAL: May it please your Lordship, members of the jury, in this case the onus is fixed fully and firmly upon the Crown to satisfy you beyond reasonable doubt that this prisoner adhered to the King's enemies between the 18th September, 1939, and the 2nd July, 1940, by broadcasting propaganda; and I shall invite you to say that the mere act of broadcasting as an employee of the German radio system was an act of adhering to the King's enemies, irrespective of the particular subject-matter of any particular broadcast.

Members of the jury, that this man did broadcast is left beyond any doubt by his own statement, to which, in so far as it consists of admissions, you are entitled to refer. You will have an opportunity of looking at the whole of it, and my Lord will no doubt refer to it in the course of his direction which he is about to make. I shall only refer to three sentences. At the beginning, and by way of explanation, he says this: "I take this opportunity of making a preliminary statement concerning the motives

that led me to come to Germany and to broadcast to Britain over the German radio service." Then, "I did not wish to play the part of a conscientious objector and, since I supposed that in Germany I should have the opportunity to express and propagate views the expression of which would be forbidden in Britain during time of war—" And finally, "I am also able to understand the resentment that my broadcasts have, in many quarters, aroused." Members of the jury, in the Work Book signed by the prisoner and acknowledged by him it appears that on the 18th September, 1939, he was taken into the employment of the German Broadcasting Company as an announcer of English news.

Members of the jury, the case does not stop there. In the evidence of Inspector Hunt you will remember that the Inspector said that, not only at the end of September or the beginning of November, 1939—he was not quite sure of the exact date—but on many subsequent occasions, both when he was at Folkestone, until the 11th December, and subsequently, in the course of 1940, he heard the prisoner's voice, with which he was familiar, broadcasting on the German wireless. You are asked to discredit and reject the evidence of Inspector Hunt in regard to the actual terms of the broadcast which he heard at the end of September or early in October, to the effect that Dover and Folkestone had been destroyed; and you are asked to say that you are not satisfied that that broadcast was made because the making of it would have been a fantastic thing. Members of the jury, fantastic no doubt to people living in Dover or Folkestone, fantastic it may be to people living in this country at that time and knowing exactly how the war was progressing; but not quite so fantastic, do you think, to British soldiers, if you will, in the far-flung outposts of the Empire, to British garrisons abroad? And not only to British soldiers but English people in foreign parts able to listen to the wireless propaganda of the Germans, but not able so readily perhaps to get accurate, immediate and first-hand knowledge of what actually was happening in England at that time? Members of the jury, you are entitled to remember what was happening in the course of the war at that time. It may not have been possible for Germany to destroy Folkestone or Dover as they had attacked other places in other parts of Europe, but you may think that, however fantastic those statements might have appeared to Inspector Hunt in Folkestone, their effect upon listeners in distant parts might have been of a very different kind.

The onus in this case, as I said to you just now and as I said to you when I first addressed you on Monday morning, is firmly fixed upon the Crown, and the last thing that the Prosecution desires in this case is to exaggerate the facts or to stretch the law. The less you might consider the prisoner entitled to receive justice at the hands of a British court, the more vitally important it is to see that he secures justice, justice according to law and justice according to the evidence; and if, when you have considered the facts, you are left in any doubt, any real doubt, not any fantastic speculation—because nothing is capable of proof with absolute certainty—but any reasonable doubt as would affect you in your own affairs, then, of course, you will acquit him, and I would invite you so to do.

Members of the jury, appearing as I do for the Crown in this case, I invite you to say that this case is far beyond doubt, and that it is your duty, in loyalty to your oaths, to find this man guilty of the offence of which he stands charged.

## SUMMING-UP

MR. JUSTICE TUCKER: Members of the jury, this prisoner, William Joyce, stands indicted on three counts in this indictment, and they all three charge him with the offence of high treason, but in somewhat different circumstances.

The first count charges him that "on the 18th September, 1939, and on divers days thereafter, and between that day and the 29th May, 1945, being then, to wit on the said several days, a British subject owing allegiance to our Lord the King," omitting some formal words, "and during which time an open and public war was being prosecuted and carried on by the German Realm and its subjects against our Lord the King, then and on the said several days traitorously contriving and intending to aid and assist the enemies, did traitorously adhere to and aid and comfort the said enemies in parts beyond the seas without the Realm, to wit in the Realm of Germany, by broadcasting to the subjects of our Lord the King propaganda on behalf of the said enemies."

The second count charges him that "on the 26th September, 1940, then being a British subject owing allegiance to the King, during the progress of the war he traitorously contriving and intending to aid and assist the enemies did traitorously adhere to and aid and comfort the said enemies in parts beyond the seas without the Realm, to wit in the Realm of Germany, by purporting to become naturalised as a subject of the Realm of Germany."

Now, members of the jury, just a word or two about those two counts, because you have got to give your verdict on those two counts as well as on the third count. The essence of those two counts is that at the time in question the prisoner was a British subject owing allegiance to the King and owing allegiance as a British subject. Now, that was a matter for the Crown to prove and to prove beyond all reasonable doubt in some way or another. I ruled at the close of the case for the Prosecution that there was some *prima facie* evidence that he was a British subject because he had so stated in his application for passports, and accordingly the case proceeded on those two counts. Yesterday a volume of evidence was adduced before you, which you will remember, called by the Defence, all with a view to establishing that from the material date and in fact at all times William Joyce, the prisoner, had never been a British subject at all; by reason of the fact that he was born in America, born of parents one of whom, the father, was at that time a naturalised American subject. As soon as that became proved, there was an end of the case on the first two counts, because the essence of those counts is that the man was alleged to have been a British subject. The evidence was clear that this man at all material times, at those times, was not a British subject at all but an American subject.

Now, members of the jury, that would have been a question of fact for you to decide on the evidence if the matter had been left to you; that would have been a matter of fact and not of law to ascertain the facts, and it would then have been for me to say and direct you whether or not on those facts he was or was not a British subject. But when that overwhelming mass of evidence had been put into the witness-box I invited the learned Attorney-General, representing the Crown in this case, to say whether or not, after he had heard that evidence and after he had refrained from cross-examining a single one of those witnesses (as you will remember was the fact), he was going to invite you as a jury to say that this man was a British subject; and he said—what of course you would naturally expect him to say—that on that evidence he would not invite you so to hold.

Unless he had said that, I should have expressed no view on the matter whatever, but left it to you; it was only when he intimated that, having heard that evidence, he on behalf of the Prosecution was not going to invite you to come to the conclusion that this man was a British subject that I expressed the opinion that the evidence in that direction was overwhelming. You heard it, and no doubt you will be able to form your own opinion on that matter. Now, members of the jury, that being the case and as on that evidence the Crown do not ask for a verdict of guilty on those two first counts, the essence of which is the proof that the prisoner was a British subject, coupled with the further proof, of course, that being a British subject he had adhered to the King's enemies—as the Prosecution recognise that they have failed to prove one of the essential elements necessary to a conviction under those counts, your duty is naturally to return a verdict of Not guilty on those two counts, because the Prosecution agree that there is no real, proper evidence on which you could possibly come to any such conclusion. You are sworn to decide this case on the evidence and on the evidence alone.

Members of the jury, with those observations I pass to Count 3, which has been so much discussed yesterday and to-day. That count charges high treason by adhering to the King's enemies elsewhere than in the King's Realm, to wit in the German Realm, contrary to the Treason Act 1351, and the particulars of the offence are that "William Joyce on the 18th September, 1939, and on divers other days thereafter and between that day and the 2nd July, 1940, being then, to wit on the several days, a person owing allegiance to our Lord the King, and whilst on the several days an open and public war was being prosecuted and carried on by the German Realm and its subjects against our Lord the King and his subjects, then and on the said several days traitorously contriving and intending to aid and assist the said enemies of our Lord the King against our Lord the King and his subjects did traitorously adhere to and aid and comfort the said enemies in parts beyond the seas without the Realm of England, to wit in the Realm of Germany, by broadcasting to the subjects of our Lord the King propaganda on behalf of the said enemies of our Lord the King."

Now, members of the jury, under that count there are two matters which have got to be established by the Prosecution and established by them beyond all reasonable doubt, and, so far as matters of fact are concerned, you have to deal with them and there is a direction that I have to give you. All matters of law, pure matters of law, are for me and for me alone; that is my responsibility. You have to take the direction in law from me, but all questions of fact are for you and for you alone; and all the essential elements necessary to constitute the offence have got to be proved by the Prosecution beyond all reasonable doubt before you can convict the accused man.

The first thing that the Prosecution have got to establish is that at the material time the prisoner William Joyce was a person owing allegiance to our Lord the King.

Now, in my view I have already intimated (after hearing the very learned and very helpful submissions that have been made by both the learned counsel in this case) the conclusion that I have reached as a matter of law it is, if you as a jury accept the facts which have been proved in this case beyond contradiction—of course you are entitled to disbelieve anything if you wish—if you accept the facts which have been proved and not denied in this case, than at the time in question as a matter of law this man William Joyce *did* owe allegiance to our Lord the King, notwithstanding the fact that he was not a British subject at the material time.

Now, members of the Jury, although that is a matter for me entirely and not for you, I think it will be convenient if I explain quite shortly the reasons by which I have arrived at that view, partly for your assistance, and perhaps for consideration hereafter in the event of this case possibly going to a higher court. Members of the jury, the offence of treason is hundreds and hundreds of years old; the very Act under which he is being prosecuted is an Act nearly six hundred years old—1351. It has been amended from time to time, but that Act was only passed for the purpose of clarifying or endeavouring to clarify the then existing law, and it has been found to serve its purpose so far as I know for six hundred years without difficulty and certainly without recent amendment so far as the essentials of the offence are concerned. But facts and circumstances change as time advances; as travel becomes easier, as facilities for travel are extended, and so forth, the world in which we live is very different from the world of 1350 or thereabouts, and it is necessary to apply the law, which never changes unless it is amended by Parliament, to the facts as they exist at the time with which one is dealing.

Members of the jury, a man may owe allegiance in two different ways. A British subject owes what is called a natural allegiance; he carries it with him wherever he goes; he cannot get rid of it; he cannot cast it off, and, if he adheres to the King's enemies anywhere, he is guilty of treason. A man who is not a British subject only owes allegiance as a result of having come within the King's Realm and having thereby put himself under the protection of the King, as it is called. In these days that may mean the protection of a democratic form of government and the laws of the country; in primitive times it may have rested more on the executive protection that he received from the King himself or his immediate servants. But that appears to have been the basis of the allegiance which is owed by persons who are not British subjects by birth, and there can be no doubt or question but that an alien, an alien friend, owes allegiance to the Crown of this country so long as he is resident within the Realm. The question which has arisen in this case is whether or not an alien who has undoubtedly—undoubtedly—put himself under the protection and thereby acquired a status under which he owes allegiance to the Crown can divest himself of that allegiance by setting foot off the shores of this country, although in so doing he may still be availing himself of the protection which is afforded to British subjects by the issue of a passport—what has been picturesquely described by the learned Attorney-General as leaving this country wrapped up in the Union Jack. That is the issue in this case, and the fact that there has never been a case precisely like it is not conclusive one way or another. It is necessary to consider what is the fundamental law on the subject and then to apply that to the facts of a particular case.

Now in coming to the conclusion I have, let me say at once there is one phrase used by the learned Attorney-General which is rather picturesque perhaps but which, I think, may be misleading and which I do not quite agree with; and that is where he says that a man who leaves the country in this way armed with a British passport has thereby clothed himself with British citizenship. You cannot do that; you are either a British citizen or you are not a British citizen; you cannot become a British citizen by saying you are a British citizen. You cannot become a British citizen by carrying a British passport. There is no such thing known to our law as crime by estoppel; you cannot become a traitor by estoppel, as it is called. None the less I think it is the law that if a man who owes allegiance by having made his home here, having come to live here permanently, thereby acquiring allegiance as he undoubtedly does—if he then steps out of this Realm armed with the protection which is normally afforded to a British

subject (improperly obtained maybe, but none the less obtained) if he leaves this Realm, as the Attorney-General called it, wrapped up in the Union Jack, that is to say, using and availing himself of the protection of the Crown in an executive capacity which covers him while he is abroad, then in my view he has not thereby divested himself of the allegiance which he already owed.

On the 24th August, 1939, beyond a shadow of doubt this man, who had come to England with his parents as a boy when he was three years old, according to the evidence called by the Defence, had lived in this country, according to the evidence of the police officer Hunt, for a number of years. He had taken active part in the political life of this country, which he was perfectly entitled to do, and then in 1933 he made application for a passport to enable him to leave this country if he so desired. We do not know whether he actually availed himself of that passport, but he got a passport and in the application dated the 4th July, 1933, he described himself as William Joyce, gave his address, said "Am a British subject by birth"—he gave his place of birth as Galway, which we now know was not accurate—and said that he required a passport for travelling to Belgium, France, Germany, Switzerland, Italy and Austria for the purpose of holiday touring, and, according to the statement issued on that passport, in the official part it says "Issued British Empire, Europe, etc. 5th July, 1933." So he appears to have obtained a passport available in the British Empire, Europe, etc. As I say, whether he made use of that passport by going abroad then or not we do not know, but by 1938 the five years' period had expired and on the 24th September, 1938, which was a significant date in the world's history, he made an application for the renewal of that passport. The application for renewal does not have to state apparently the purpose for which it is required, as the original one did; the application was made for the renewal of one year and the official form shows, "Renewed one period to the 1st July, 1939." Again we do not know whether that passport was used or whether it was not. The application for renewal was made in 1938. Then on the 24th August, 1939, which was also approaching a vital date in world history, an application was made for renewal, and on both those applications the prisoner described himself as a British subject by birth and we know that a passport was accordingly granted to him.

The passport appears to have received sanction on the 24th August, 1939, the day the application was made. Precisely when it was issued we do not know and we have not seen the passport because that, of course, would be in his possession; notice to produce has been given, but it is not forthcoming. But we do know what is the form of passports in existence at that time. The formal part of the document is in these words "We, Sir John Allsebrook, a Member of His Majesty's most Honourable Privy Council"—then setting out his other Orders and titles—"His Majesty's Principal Secretary of State for Foreign Affairs request and require in the name of His Majesty all those whom it may concern to allow the bearer to pass freely without let or hindrance, and to afford him every assistance and protection of which he may stand in need." Members of the jury, it is a fact that by the comity of nations people armed with passports of that kind, by the courtesy it may be of foreign countries, receive the consideration and protection and so forth which is due to a subject of the state which has issued a passport of that kind. It is true to say that the protection afforded thereby is of an executive kind. I think it is a protection not giving him the protection of any law while he is abroad but giving him the protection which the Executive of this country will give by diplomatic action, or in extreme cases by going to war, because the treatment of a

subject of one nation by another has before now led to war. That is the kind of protection which is afforded by a passport.

Members of the jury, the next that we know of the prisoner William Joyce is that according to the Work Pass, which he admitted after arrest to be one of his possessions—that is a document which you will see when you retire and you will have to deal with it in another connection; I am only dealing with the law of allegiance at the moment—that is a document which shows (and it bears his signature on the first page) under the heading of "Previous occupations of long duration, No. 4: Editor and speaker, German Radio Company, Berlin-Charlottenburg, 19th September, 1939," and on page 6 under the column "Name and place of concern: German Radio Company, Berlin-Charlottenburg. Date of beginning of employment: 18th September, 1939. Nature of Employment: Announcer of English news." That, according to the document which he admitted to be his property, which is called a Work Book and which bears his signature, appears to show that that was the capacity in which he was employed on the 18th September, 1939. So between the 24th August and the 18th September, 1939, armed with a British passport he had somehow or another entered Germany.

Now, members of the jury, thereafter up until the 2nd July, 1940, when his passport ran out, he remained under such protection as that passport could afford him during his stay in Europe. Members of the jury, the application for the passport had not been confined to Germany; so he was in possession of a passport which might, if he had so wished, have been of much more use to him perhaps at any rate if he had been a loyal subject in some neutral country than in Germany. I mention that only because it is said and has been said: "What kind of protection would an English passport be to a man in Germany after the war had broken out?" Well, there may be a great deal of force in that observation, though even then there are rights which a belligerent nation is by International Law bound to extend to the civilian subjects of the country with which it is at war. But dealing with the protection which is in fact afforded by a passport of this nature I merely mention the fact that the passport—at any rate the application, and apparently the grant followed the application—in fact was a renewal of the passport which had been granted in 1933 and was available for the British Empire, Europe, etc.; so he was not confined to Germany, of course, and was afforded protection throughout Europe, a protection which might have been a very real protection in some other country than Germany, you may think.

Now, members of the jury, those are the facts upon which I have to decide whether or not this man at the material time owed allegiance to the British Crown, or rather, I prefer to put it, whether anything had happened to cause the allegiance which he undoubtedly owed on the 24th August, 1939, and had owed for years and years—whether anything had happened thereafter to bring that allegiance to an end.

Now, members of the jury, many, many years ago the Judges who had to decide these matters in days when treason trials were much more frequent than they are now—there are numerous kinds of different treason—came to this conclusion (and I am reading from a book of great authority, *East's Pleas of the Crown*, in which it records what the decision was the Judges came to): "*Local allegiance is that which is due from a foreigner during his residence here and is founded on the protection he enjoys for his own person, his family and effects, during the time of that residence. This allegiance ceases whenever he withdraws with his family and effects; for his temporary protection being then at an end, the duty arising from it also determines. But if he only go abroad himself—leaving his family and*



*effects here under the same protection, the duty still continues and, if he commit treason, he may be punished as a traitor ; and this whether his own sovereign be at enmity or at peace with ours. Therefore, if he aid even his own countrymen in acts or purposes of hostility, while he is resident here, he may be dealt with in the same manner. The above rule was laid down by all the Judges assembled at the Queen's command, on the 12th January, 1707."*

Now, members of the jury, that was apparently what the Judges resolved, and that would be very considerable authority upon which I might act. But the matter does not rest there because that decision is recorded in this ancient book of great authority and, so far as I am aware, the accuracy of it has not been questioned. That gives added authority, if that were necessary, to the resolution arrived at by the Judges. It is perfectly true that in the cases that have been quoted to me, cases dealing with facts very different from the present, other definitions of treason have been given rather different from that and emphasising the essential of residence; but, so far as I am aware no case has been cited to me, or no author at any rate, who has ever volunteered to say that the law in the terms as laid down there in *East's Pleas of the Crown* is wrong.

Now, members of the jury, the same resolution really is referred to in another book of great authority, *Foster's Crown Law*, and there, reading from page 185, section 2: "*An alien whose sovereign is in amity with the Crown of England, residing here and receiving the protection of the law, oweth a local allegiance to the Crown during the time of his residence, and, if during that time he committeth an offence which in the case of a natural-born subject would amount to treason, he may be dealt with as a traitor. For his person and personal estate are as much under the protection of the law as the natural-born subject's and if he is injured in either he hath the same remedy at law for such injury.*" Then section 3: "*An alien whose sovereign is at enmity with us, living here under the King's protection, and committing offences amounting to treason, may likewise be dealt with as a traitor. For he oweth a temporary local allegiance founded on that share of protection he receiveth.*" Section 4—and this is the material section—says: "*And if such alien, seeking the protection of the Crown, and having a family and effects here, should during a war with his native country go thither and there adhere to the King's enemies for purposes of hostility, he might be dealt with as a traitor. For he came and settled here under the protection of the Crown ; and though his person was removed for a time his effects and family continued still under the same protection. This rule was laid down by all the Judges assembled at the Queen's command, 12th January, 1707."*

Now, members of the jury, the force of that decision, twice reported in books of authority, is this: that, if correct, it shows at any rate that the physical presence of an alien in this country is not an essential ingredient to the offence of treason, because, according to that, he can be convicted of treason if he adheres to the enemy although he has left the realm, if his family and effects and so forth are receiving protection. If that is right, it shows at any rate that the submission of learned counsel for the Defence is not right to this extent, when he submits that this court can under no circumstances ever have any jurisdiction over a foreigner once he has left the shores of this country; and it seems to me to indicate that the real basis of this law of treason is founded upon the protection which a man is receiving from the Crown to which he has acquired allegiance by residence, and I see no reason whatever why that allegiance and that protection should not cover him when he is away from this country carrying the King's passport, just as much as when he has left his ox and his ass

behind in this country. Do not let me be misunderstood: there is no evidence whatever in this case that this man left his family or effects in this country. For a man of thirty-three to go abroad and leave his father and mother and brothers and sisters is not the kind of leaving a family behind which is referred to in those cases. I merely refer to those cases for the purpose of showing that in my view it is the protection which is one of the essentials to bring about—I will not say to bring about, but at any rate to preserve—the allegiance which has already become due from the foreigner by his adopting this country as his home and his residence.

Now, members of the jury, at some length I have dealt with this matter as I thought it right for your proper understanding. I thought after the very able addresses that I heard on this subject from the learned counsel that it was only due to them that I should make known my views on this matter and the reasoning by which I have arrived at those views. I pass over the subsequent authorities and cases which have been cited which repeat and deal with the law, because in my view they are all dealing with different facts and different circumstances. Nothing is more misleading than to take an extract from a case dealing with certain facts and treat it as of universal application. You have got to find out what the principle of the thing is and then apply it to the facts with which you are dealing; and in my view, if these statements of the law that I have referred to in *East's Pleas of the Crown* and *Foster's Crown Law* are right, I do not think that I am in any way extending the principles of the law in saying that a man, who in this way adopts and uses the protection of the Sovereign to whom he has already acquired an allegiance, remains under that allegiance and is guilty of treason if he adheres to the King's enemies.

Members of the jury, I accordingly pass from that aspect of the matter; that is my responsibility. I may be wrong; if I am, I can be corrected. My duty is to tell you what I believe to be the law on the subject, and that you have to accept from me, provided you believe those facts about the passport, going abroad and so forth. If you do not believe that, you are entitled to reject it and say so, because you are not bound to believe everything; but, if you accept the uncontradicted evidence that has been given, then in my view that shows that this man at the material time owed allegiance to the British Crown.

Now, if that is so, then the matter passes into your hands, and from now onwards I am dealing with matters which are your concern and your concern alone, with which I have got nothing to do. They are matters of fact, and the onus of proving those facts is upon the Prosecution from first to last and it never shifts.

Now, what have they got to prove? They have got to prove that during this period, as I have already indicated, this man adhered to the King's enemies without the realm, namely in Germany; traitorously adhered to and aided and comforted the said enemies in parts beyond the seas by broadcasting to the subjects of our Lord the King propaganda on behalf of the said enemies of our Lord the King. Members of the jury, adhering to the King's enemies and aiding and comforting them means nothing more than actively throwing in your lot with the enemy; actively assisting the enemy. Put a little more elaborately in a famous case after the last war the jury were directed as follows (it was dealing with a British subject and therefore I am altering the words "British subject"): "If a subject owing allegiance does an act which strengthens or tends to strengthen the enemies of the King in the conduct of a war against the King, that is, in law, the giving of aid and comfort to the King's enemies." Again, if a British subject commits an act which weakens or tends to weaken the powers of the King and the country to resist or to attack the enemies of the King

and the country, that is, in law, the giving of aid and comfort to the King's enemies."<sup>1</sup> All I need add to that is that it must be done with the intention of aiding the King's enemies as well. A man must not only aid and comfort the King's enemies, but he must do so with that intent and he must do so voluntarily. It does not mean if he is compelled by the Germans to do so by *force majeure*, but, if he voluntarily adheres to the King's enemies or actively assists them with intent to assist them in a war against this country, that is adhering to the King's enemies and giving them aid and comfort.

Members of the jury, what are the facts about that? Perhaps not so full as one could wish, covering the material part of the case, because in considering these matters you will confine yourselves, and be careful to confine yourselves, to the dates set out in this indictment, namely between the 18th September, 1939, and the 2nd July, 1940. Pay no attention whatever—put away from your minds altogether the evidence which has been given with regard to activities alleged against him under the other two counts, for this reason: this man was at any rate up to the time when he may have purported to become a German citizen, at any rate up to that time he was an American citizen; although I have held that so long as he was under the protection of a passport he owed allegiance to this Crown, directly that protection ceased, ceased for good and all and he did not seek to renew it, he as an American citizen by the law of this country, at any rate by the law of treason, was entitled, as far as I know, to change his nationality and become a German with protection from Germany. Therefore, do not put against him in considering his activities in this period when he held this passport anything he may have done thereafter, which, being an American citizen, he may have been entitled to do; and for the purposes of this case it is best to assume he was entitled to do.

Now, members of the jury, what is the evidence with regard to what he did during this material time? As I have said, it is perhaps to be regretted that you may not have had a little fuller information with regard to this than you have got. And I say that merely for this reason: that, while the police officer who gave evidence on this matter, Inspector Hunt, told you of one broadcast in which he recognised this man's voice and said there were a number of others he heard at Dover or Folkestone or wherever he was down there during the late autumn of 1939, one would have thought and hoped that it would have been possible perhaps to have known what was the contents of some of those other broadcasts, even if he did not remember them. But there it is; you have got to do the best you can on the material that has been offered to you.

Now, what did this man Inspector Hunt say? He was a Detective-Inspector and he said that he had known the prisoner since 1934; he had not spoken to him but he had listened to him making political speeches from time to time, and he said he knew his voice. He said that on the 3rd September, 1939, he was stationed at Folkestone and he was there till the 10th December, 1939. He said, "I then returned to London. While at Folkestone I listened to a broadcast. I recognised the voice immediately as the prisoner's. It was during the first month of the war. He said Dover and Folkestone had been destroyed. There had not been any enemy activity at Folkestone at that time. I heard him again on the wireless on sundry occasions," and then after he returned to London he took notes of it. Now that is the evidence of Inspector Hunt. It is for you to say entirely whether you accept it and believe it and rely upon it as fair identification of the voice of this prisoner. Those are all matters entirely for you, but in coming to your decision you are entitled, I think,

<sup>1</sup> This quotation is from the summing-up by Lord Reading in the trial of Roger Casement in 1916. It was thus during (and not "after") the last war.

to have regard to that Work Pass that I have already referred to, the ownership of which he admitted, in which, you will remember, it was shown on page 6 that on the 18th September, 1939, he was employed as an announcer of English news by the German Radio Company, Berlin-Charlottenburg 9.

Then, members of the jury, after this he had been apprehended in Germany in circumstances which you remember and which I need not refer to. He made a statement, and I need not read the first part of it because it is answers to questions which were put to him with regard to his nationality and we are not dealing with that aspect of the case now. It goes on:

"I take this opportunity of making a preliminary statement concerning the motives which led me to come to Germany and to broadcast to Britain over the German radio service. I was actuated not by the desire for personal gain, material or otherwise, but solely by political conviction. I was brought up as an extreme Conservative with strong Imperialist ideas, but very early in my career, namely in 1923, became attracted to Fascism and subsequently to National Socialism. Between the years 1923 and 1939 I pursued vigorous political activities in England, at times as a Conservative but mainly as a Fascist or National Socialist. In the period immediately before this war began I was profoundly discontented with the policies pursued by British Governments, first, because I felt that they would lead to the eventual disruption of the British Empire, and secondly, because I thought the existing economic system entirely inadequate to the needs of the times.

"I was very greatly impressed by constructive work which Hitler had done for Germany and was of the opinion that throughout Europe and also in Britain there must come a reform on the lines of National Socialist doctrine, although I did not suppose that every aspect of National Socialism as advocated in Germany would be accepted by the British people.

"One of my dominant beliefs was that a war between Britain and Germany would be a tragedy, the effects of which Britain and the British Empire would not survive and I considered that a grossly disproportionate influence was exerted on British policy by the Jews who had their reasons for hating National Socialist Germany.

"When in August, 1939, the final crisis emerged, I felt that the question of Danzig offered no just cause for a world war. As by reason of my opinions I was not conscientiously disposed to fight for Britain for Germany," it reads, "I decided to leave the country, since I did not wish to play the part of a conscientious objector and since I supposed that in Germany I should have the opportunity to express and propagate views the expression of which would be forbidden in Britain during time of war. Realising, however, that at this critical juncture I had declined to serve Britain, I drew the logical conclusion that I should have no moral right to return to that country of my own free will and that it would be best to apply for German citizenship and make my permanent home in Germany. Nevertheless, it remained my undeviating purpose to attempt as best I could to bring about a reconciliation or at least an understanding between the two countries.

"After Russia and the United States had entered the war such an agreement appeared to me no less desirable than before, for, although it seemed probable that with these powerful allies Britain would succeed in defeating Germany, I considered that the price which would ultimately have to be paid for this help would be far higher than the price involved in a settlement with Germany. This belief was strengthened from month to month as the power of Russia grew, and during the later stages of the war I became certain that Britain, even though capable of gaining a military

triumph over the Germans, would in that event be confronted with a situation far more dangerous and complicated than that which existed in August, 1939; and thus until the very last moment I clung to my hope of an Anglo-German understanding, although I could see that the prospects thereof were small.

"I know that I have been denounced as a traitor and I resent the accusation, as I conceive myself to have been guilty of no underhand or deceitful act against Britain, although I am also able to understand the resentment that my broadcasts have, in many quarters, aroused. Whatever opinion may be formed at the present time with regard to my conduct I submit that the final judgment cannot be properly passed until it is seen whether Britain can win the peace.

"Finally, I should like to stress the fact that in coming to Germany and in working for the German radio system my wife was powerfully influenced by me. She protests to the contrary but I am sure that, if I had not taken this step, she would not have taken it either."

Now, members of the jury, that was the statement that he made. I have read it for you so that you may have it in your mind; and you can see it if you wish.

I think that is the whole of the very short material upon which you have to come to the conclusion as to whether or not it has been proved to your satisfaction beyond all reasonable doubt that during the period in question this man adhered to the King's enemies, comforted and aided them with intent to assist them, and that he did so voluntarily. Those are the matters which you have to consider.

You have heard what has been said to you by learned counsel about these broadcasts. Do you think it is essential for propaganda that it should either be false or true? Propaganda may be true and some may be false, may it not? Does it matter whether it is false or true if it is broadcast over the enemy radio system? What is the purpose and object of a broadcast from Germany in English? What is the purpose of it? To assist the Germans or to assist the English? Those are all matters for your judgment and you will come to your conclusion thereon as you think is right and proper.

Now, members of the jury, there are only one or two other observations that I want to make before parting with this case; and one of them is just this, one matter that I think I had better just clear right out of the way because it has got nothing whatever to do with this case. When this man was put up to plead on the first day of his trial he pleaded Not guilty to this indictment and then the learned Clerk following the practice of this Court said, "There is a further indictment against you." At that stage I stopped him, because I think it is better to deal with one thing at a time. The jury are only concerned with the particular charge or indictment against the man; he may even be prejudiced if it were known that there was some other indictment against him. In this case there can be no possible prejudice against him by reason of the other charge, and I am going to tell you what it is, so as to remove any idea you may get in your heads that there is any mystery or secrecy about the matter at all. He is charged in a second indictment with an offence under the Treachery Act, as it is called, of 1940. It is only an alternative way; all the facts relied upon are exactly the same as in this case. It is nothing new, no new crime or fact; it is merely an alternative way of putting this matter, which may or may not have to be gone into according to the result of this case. I am only telling you that; it is of no concern of yours whatever. I am only telling it to you so as to remove any false idea you may have in your heads that there was any secrecy or mystery about this second indictment.

Now, members of the jury, you have heard the whole of this case. You have had the assistance, if I may say so, of the admirable addresses you have listened to by the learned Attorney-General who has put the matter so fully before you. You have also had, and I have had, what I agree entirely to have been the distinguished assistance of Mr. Slade in this matter. Now, members of the jury, Mr. Slade may be for all I know having a very uncongenial task in this case, but how can justice be administered if people charged with these offences are not defended and are not defended by able and responsible counsel? How can you get at the truth of any matter unless members of the Bar, acting in accordance with the highest traditions of the Bar, put their services at the disposal of men of all kinds and of all races, whatever the charge may be that is brought against them? Members of the jury, some people sometimes talk about the law's delays, and clamour for what is called swift justice. This case was postponed from the July sessions to the September sessions. Supposing it had not been; what would have been the result? Look at this mass of evidence that has been obtained from America and elsewhere with the assistance of those legal gentlemen who have put themselves at the service of this man, in order that you as a British jury may know the real and true facts before you arrive at your verdict. If there had not been, if I may say so, this proper adjournment of this trial, it would have been heard on incomplete evidence; and a jury might have very likely come to the conclusion that this man was a British subject when in fact he was nothing of the kind, because there had not been sufficient time for the quiet and unhurried collection of the material upon which a British jury should be directed to try a case of this kind—or of any kind. Members of the jury, those first two counts are of very grave importance and on those counts the evidence has come out favourable to the defendant and he is saved from those two counts, which may or may not in history be a matter of vital importance. I mention that, for the purpose of explaining to you how necessary it is that these matters should be considered on the evidence and that you should have the proper evidence; people should not clamour merely for speed at all costs.

Now, as you have been very rightly told and reminded—you have been told already once—William Joyce would play a very small part in the world's history and that our demeanour, the way we comport ourselves in this case, is of greater importance to us than is William Joyce; observations that are very true. But I only add this: that it is not only the way we outwardly comport ourselves in the proceedings in this court, but it applies and applies with even greater force to the way you comport yourselves when you retire to consider your verdict, to be sure that you arrive at what you honestly believe to be a true verdict according to the facts, regardless of opinion or anything of that kind, and it applies to me in the very responsible decisions of law that I have had to come to in this case.

Members of the jury, will you kindly retire now and with regard to Counts 1 and 2 I think, no doubt, having regard to the attitude taken by the learned Attorney-General, you will return a verdict of Not guilty. On Count 3 you will ask yourselves whether or not the case has been proved to your satisfaction beyond all reasonable doubt. If it has, you will say he is Guilty; if it has not, and you are left in any kind of doubt about it, you will say he is Not guilty. Will you kindly retire and let me know how you find?

*(The jury retired to consider their verdict at 3.37 and returned into court at 4 o'clock.)*

THE CLERK OF THE COURT: Members of the jury, are you agreed upon your verdict ?

THE FOREMAN OF THE JURY: We are.

THE CLERK OF THE COURT: Do you find the prisoner William Joyce guilty or not guilty on the first two counts of this indictment ?

THE FOREMAN OF THE JURY: Not guilty, my Lord.

THE CLERK OF THE COURT: Do you find him guilty or not guilty on the third count of high treason ?

THE FOREMAN OF THE JURY: Guilty.

THE CLERK OF THE COURT: You find him guilty on the third count of high treason, and not guilty on the first and second counts; and that is the verdict of you all ?

THE FOREMAN OF THE JURY: That is.

THE CLERK OF THE COURT: Prisoner at the Bar, you stand convicted of high treason. Have you anything to say why the court should not give judgment of death according to law ?

*(Formal sentence of death was then passed.)*

THE CHAPLAIN: Amen.

## JUDGMENTS OF THE HOUSE OF LORDS<sup>1</sup>

LORD JOWITT, L.C.: My Lords, on 7th November, 1945, the Court of Criminal Appeal dismissed the appeal of the appellant, William Joyce, who had, on 19th September, 1945, been convicted of high treason at the Central Criminal Court and duly sentenced to death. The Attorney-General certified under the Criminal Appeal Act, 1907, s. 1 (6), that the decision of the Court of Criminal Appeal involved a point of law of exceptional public importance and that in his opinion it was desirable in the public interest that a further appeal should be brought. Hence this appeal is brought to your Lordships' House. And, though in accordance with the usual practice the certificate of the Attorney-General does not specify the point of law raised in the appeal, it is clear that the question for your Lordships' determination is whether an alien who has been resident within the realm can be held guilty and convicted in this country for high treason in respect of acts committed by him outside the realm. This is in truth a question of law of far-reaching importance.

The appellant was charged at the Central Criminal Court on three counts, upon the third of which only he was convicted. That count was as follows:—

### Statement of offence:

High treason by adhering to the King's enemies elsewhere than in the King's realm, to wit, in the German realm, contrary to the Treason Act, 1351.

### Particulars of offence:

William Joyce, on 18th September, 1939, and on divers other days thereafter and between that day and 2nd July, 1940, being then—to wit on the several days—a person owing allegiance to our Lord the King, and whilst on the said several days an open and public war was being prosecuted and carried on by the German realm and its subjects against our Lord the King and his subjects, then and on the said several days traitorously contriving and intending to aid and assist the said enemies of our Lord the King against our Lord the King and his subjects did traitorously adhere to and aid and comfort the said enemies in parts beyond the seas without the realm of England, to wit, in the realm of Germany, by broadcasting to the subjects of our Lord the King propaganda on behalf of the said enemies of our Lord the King.

The first and second counts, upon which the appellant was found not guilty, were based upon the assumption that he was at all material times a British subject. This assumption was proved to be incorrect; therefore upon these counts the appellant was rightly acquitted.

The material facts are few. The appellant was born in the U.S.A. in 1906, the son of a naturalised American citizen who had previously been a British subject by birth. He thereby became himself a natural-born American citizen. At about three years of age he was brought to Ireland, where he stayed until about 1921, when he came to England. He stayed in England until 1939. He was then thirty-three years of age. He was brought up and educated within the King's Dominions, and he settled there.

On 4th July, 1933, he applied for a British passport, describing himself as a British subject by birth, born in Galway. He asked for the passport for the purpose of holiday touring in Belgium, France, Germany, Switzerland, Italy and Austria. He was granted the passport for a period of five years. The document was not produced, but its contents were duly proved. In

<sup>1</sup> These judgments are included here by permission of the proprietors of the All England Reports.



it he was described as a British subject. On 24th September, 1938, he applied for a renewal of the passport for a period of one year. He again declared that he was a British subject and had not lost that national status. His application was granted. On 24th August, 1939, he again applied for a renewal of his passport for a further period of one year, repeating the same declaration. His application was granted, the passport, as appears from the endorsement on the declaration, being extended to 1st July, 1940.

On some day after 24th August, 1939, the appellant left the realm. The exact date of his departure was not proved. Upon his arrest in 1945 there was found upon his person a Work Book issued by the German State on 4th October, 1939, from which it appeared that he had been employed by the German Radio Company of Berlin, as an announcer of English news from 18th September, 1939. In this document his nationality was stated to be "Great Britain" and his special qualification "English." It was proved to the satisfaction of the jury that he had at the dates alleged in the indictment broadcast propaganda on behalf of the enemy. He was found guilty accordingly.

From this verdict an appeal was brought to the Court of Criminal Appeal, and I think it right to set out the grounds of that appeal. They were as follows:

(1) The court wrongly assumed jurisdiction to try an alien for an offence against British law committed in a foreign country.

(2) The Judge was wrong in law and misdirected the jury in directing them that the appellant owed allegiance to His Majesty the King during the period from 18th September, 1939, to 2nd July, 1940.

(3) That there was no evidence that the renewal of the appellant's passport afforded him or was capable of affording him any protection or that the appellant ever availed himself or had any intention of availing himself of any such protection.

(4) If (contrary to the appellant's contention) there were any such evidence, the issue was one for the jury and the Judge failed to direct them thereon.

The Court of Criminal Appeal, as I have already said, dismissed the appeal, and it will be convenient if I deal with the grounds of appeal in the same order as did that court, first considering the important question of law raised in the second ground. The House is called upon in 1945 to consider the scope and effect of a Statute of 1351, the twenty-fifth year of the reign of Edward III. That Statute, as has been commonly said and as appears from its terms, was itself declaratory of the common law: its language differs little from the statement in Bracton: see 2 Bracton 258, *Stephen's History of the Criminal Law of England*, Vol. II, 243. It is proper to set out the material parts. Thus it runs:—

*Whereas divers opinions have been before this time [in what case treason shall be said and in what not]; the King, at the request of the lords and commons, hath made a declaration in the manner as hereafter followeth, that is to say: if a man do levy war against our lord the King in his realm, or be adherent to the King's enemies in his realm, giving them aid and comfort in the realm or elsewhere. . . .*

then (I depart from the text and use modern terms) he shall be guilty of treason.

It is not denied that the appellant has adhered to the King's enemies giving them aid and comfort elsewhere than in the realm. Upon this part of the case the single question is whether, having done so, he can be and in the circumstances of the case is guilty of treason.

Your Lordships will observe that the statute is wide enough in its

terms to cover any man anywhere, "if a man do levy war . . ." Yet it is clear that some limitation must be placed upon the generality of the language, for the context in the preamble poses the question "in what case treason shall be said and in what not." It is necessary then to prove not only that an act was done but that, being done, it was a treasonable act. This must depend upon one thing only, namely, the relation in which the actor stands to the King to whose enemies he adheres. An act that is in one man treasonable, may not be so in another.

In the long discussion which your Lordships have heard upon this part of the case attention has necessarily been concentrated on the question of allegiance. The question whether a man can be guilty of treason to the King has been treated as identical with the question whether he owes allegiance to the King. An act, it is said, which is treasonable if the actor owes allegiance, is not treasonable if he does not. As a generalisation, this is undoubtedly true and is supported by the language of the indictment, but it leaves undecided the question by whom allegiance is owed and I shall ask your Lordships to look somewhat more deeply into the principle upon which this statement is founded, for it is by the application of principle to changing circumstances that our law has developed. It is not for His Majesty's Judges to create new offences or to extend any penal law and particularly the law of high treason, but new conditions may demand a reconsideration of the scope of the principle. It is not an extension of a penal law to apply its principle to circumstances unforeseen at the time of its enactment, so long as the case is fairly brought within its language.

I have said, my Lords, that the question for consideration is bound up with the question of allegiance. Allegiance is owed to their Sovereign Lord the King by his natural-born subjects; so it is by those who, being aliens, become his subjects by denisation or naturalisation (I will call them all "naturalised subjects"); so it is by those who, being aliens, reside within the King's realm. Whether you look to the feudal law for the origin of this conception or find it in the elementary necessities of any political society, it is clear that fundamentally it recognises the need of the man for protection and of the Sovereign Lord for service. *Protectio trahit subjectionem et subjectio protectionem*. All who were brought within the King's protection were *ad fidem regis*: all owed him allegiance. The topic is discussed with much learning in *Calvin's Case*.

The natural-born subject owes allegiance from his birth, the naturalised subject from his naturalisation, the alien from the day when he comes within the realm. By what means and when can they cast off allegiance? The natural-born subject cannot at common law at any time cast it off. *Nemo potest exuere patriam* is a fundamental maxim of the law from which relief was given only by recent statutes. Nor can the naturalised subjects at common law. It is in regard to the alien resident within the realm that the controversy in this case arises. Admittedly he owes allegiance while he is so resident, but it is argued that his allegiance extends no further. Numerous authorities were cited by counsel for the appellant in which it is stated without any qualification or extension that an alien owes allegiance so long as he is within the realm, and it has been argued with great force that the physical presence of the alien actor within the realm is necessary to make his act treasonable. It is implicit in this argument that during absence from the realm, however brief, an alien ordinarily resident within the realm cannot commit treason; he cannot under any circumstances by giving aid and comfort to the King's enemies outside the realm be guilty of a treasonable act.

My Lords, in my opinion this, which is the necessary and logical statement of the appellant's case, is not only at variance with the principle of

the law, but is inconsistent with authority which your Lordships cannot disregard. I refer first to authority. It is said in *Foster's Crown Cases* (3rd Edn., p. 183):

*Local allegiance is founded in the protection a foreigner enjoyeth for his person, his family or effects, during his residence here; and it ceaseth whenever he withdraweth with his family and effects.*

And then (*ibid.*, at p. 185) comes the statement of law upon which the passage I have cited is clearly founded:

*Section 4. And if such alien, seeking the protection of the Crown, and having a family and effects here, should, during a war with his native country, go thither, and there adhere to the King's enemies for purposes of hostility, he might be dealt with as a traitor. For he came and settled here under the protection of the Crown; and, though his person was removed for a time, his effects and family continued still under the same protection. This rule was laid down by all the Judges assembled at the Queen's command, 12th January, 1707.*

The author has a side note against the last line of this passage. "MSS. Tracy, Price, Dod and Denton." These manuscripts have not been traced but their authenticity is not questioned. It is indeed impossible to suppose that Sir Michael Foster could have incorporated such a statement except upon the surest grounds and it is to be noted that he accepts equally the fact of the Judges' resolution and the validity of its content. This statement has been repeated without challenge by numerous authors of the highest authority—e.g., *Hawkins' Pleas of the Crown*, 1795 Edn., *East's Pleas of the Crown*, 1803 Edn., Vol. I, p. 52, *Chitty on Prerogatives of the Crown*, 1820 Edn., pp. 12, 13. It may be said that the language of some of these writers is not that of enthusiastic support, but neither in the text-books written by the great masters of this branch of the law nor in any judicial utterance has the statement been challenged. Moreover it has been repeated without any criticism in our own times by Sir William Holdsworth whose authority on such a matter is unequalled: see his article in *Halsbury's Laws of England*, Hailsham Edn., Vol. 6, p. 416, note (i).

Your Lordships can give no weight to the fact that in such cases as *Johnstone v. Pedlar* the local allegiance of an alien is stated without qualification to be coterminous with his residence within the realm. The qualification that we are now discussing was not relevant to the issue nor brought to the mind of the court. Nor was the Judges' resolution referred to nor the meaning of "residence" discussed. In my view, therefore, it is the law that in the case supposed in the resolution of 1707 an alien may be guilty of treason for an act committed outside the realm. The reason which appears in the resolution is illuminating. The principle governing the rule is established by the exception: "though his person was removed for a time his family and effects continued under the same protection," that is, the protection of the Crown. The vicarious protection still afforded to the family, which he had left behind in this country, required of him a continuance of his fidelity. It is thus not true to say that an alien can never in law be guilty of treason to the sovereign of this realm in respect of an act committed outside the realm.

My Lords, here no question arises of a vicarious protection. There is no evidence that the appellant left a family or effects behind him when he left this realm. I do not for this purpose regard parents or brothers or sisters as a family. But though there was no continuing protection for his family or effects, of him too it must be asked whether there was not such protection still afforded by the sovereign as to require of him the continuance of his allegiance. The principle which runs through feudal law and what I may perhaps call constitutional law requires on the one

hand protection, on the other fidelity: a duty of the sovereign lord to protect, a duty of the liege or subject to be faithful. Treason, "trahison" is the betrayal of a trust: to be faithful to the trust is the counterpart of the duty to protect.

It serves to illustrate the principle which I have stated that an open enemy who is an alien, notwithstanding his presence in the realm, is not within the protection nor, therefore, within the allegiance of the Crown. He does not owe allegiance because although he is within the realm he is not under the sovereign's protection.

The question then is how is this principle to be applied to the circumstances of the present case. My Lords, I have already stated the material facts in regard to the appellant's residence in this country, his applications for a passport and the grant of such passport to him, and I need not restate them. I do not think it necessary in this case to determine what for the purpose of the doctrine, whether stated with or without qualification, constitutes for an alien "residence" within the realm. It would, I think, be strangely inconsistent with the robust and vigorous commonsense of the common law to suppose that an alien quitting his residence in this country and temporarily on the high seas beyond territorial waters or at some even distant spot now brought within speedy reach and there adhering and giving aid to the King's enemies could do so with impunity. In the present case the appellant had long resided here and appears to have had many ties with this country, but I make no assumption one way or another about his intention to return and I do not attach any importance to the fact that the original passport application and, therefore, presumably the renewals also were for "holiday touring."

The material facts are these, that being for long resident here and owing allegiance he applied for and obtained a passport and leaving the realm adhered to the King's enemies. It does not matter that he made false representations as to his status, asserting that he was a British subject by birth, a statement that he was afterwards at pains to disprove. It may be that when he first made the statement, he thought it was true. Of this there is no evidence. The essential fact is that he got the passport and I now examine its effect. The actual passport issued to the appellant has not been produced, but its contents have been duly proved. The terms of a passport are familiar. It is thus described by Lord Alverstone, L.C.J., in *Brailsford's case* (1905 2 K.B. 730, at p. 745):

*It is a document issued in the name of the Sovereign on the responsibility of a Minister of the Crown to a named individual, intended to be presented to the Governments of foreign nations and to be used for that individual's protection as a British subject in foreign countries. . . .*

By its terms it requests and requires in the name of His Majesty all those whom it may concern to allow the bearer to pass freely without let or hindrance and to afford him every assistance and protection of which he may stand in need. It is, I think, true that the possession of a passport by a British subject does not increase the Sovereign's duty of protection, though it will make his path easier. For him it serves as a voucher and means of identification. But the possession of a passport by one who is not a British subject gives him rights and imposes upon the Sovereign obligations which would otherwise not be given or imposed. It is immaterial that he has obtained it by misrepresentation and that he is not in law a British subject. By the possession of that document he is enabled to obtain in a foreign country the protection extended to British subjects. By his own act he has maintained the bond which, while he was within the realm, bound him to his Sovereign. The question is not whether he obtained British citizenship by obtaining the passport, but whether by its receipt he

extended his duty of allegiance beyond the moment when he left the shores of this country. As one owing allegiance to the King he sought and obtained the protection of the King for himself while abroad.

Your Lordships were pressed by counsel for the appellant with a distinction between the protection of the law and the protection of the Sovereign, and he cited many passages from the books in which the protection of the law was referred to as the counterpart of the duty of allegiance. Upon this he based the argument that, since the protection of the law could not be given outside the realm to an alien, he could not outside the realm owe any duty. This argument in my opinion has no substance. In the first place reference is made as often to the protection of the Crown or Sovereign or Lord or Government as to the protection of the law, sometimes also to protection of the Crown and the law. In the second place it is historically false to suppose that in olden days the alien within the realm looked to the law for protection except in so far as it was part of the law that the King could by the exercise of his prerogative protect him. It was to the King that the alien looked and to his dispensing power under the prerogative. It is not necessary to trace the gradual process by which the civic rights and duties of a resident alien became assimilated to those of the natural-born subject; they have in fact been assimilated, but to this day there will be found some difference. It is sufficient to say that at the time when the common law established between Sovereign Lord and resident alien the reciprocal duties of protection and allegiance it was to the personal power of the Sovereign rather than to the law of England that the alien looked. It is not, therefore, an answer to the Sovereign's claim to fidelity from an alien without the realm who holds a British passport that there cannot be extended to him the protection of the law.

What is this protection upon which the claim to fidelity is founded? To me, my Lords, it appears that the Crown in issuing a passport is assuming an onerous burden, and the holder of a passport is acquiring substantial privileges. A well-known writer on international law has said (see *Oppenheim's International Law*, 4th Edn., Vol. I, p. 556) that by a universally recognised customary rule of the law of nations every State holds the right of protection over its citizens abroad. This rule thus recognised may be asserted by the holder of a passport which is for him the outward title of his rights. It is true that the measure in which the State will exercise its right lies in its discretion. But with the issue of the passport the first step is taken. Armed with that document the holder may demand from the State's representatives abroad and from the officials of foreign Governments that he be treated as a British subject, and even in the territory of a hostile State may claim the intervention of the protecting Power. I should make it clear that it is no part of the case for the Crown that the appellant is debarred from alleging that he is not a British subject. The contention is a different one: it is that by the holding of a passport he asserts and maintains the relation in which he formerly stood, claiming the continued protection of the Crown and thereby pledging the continuance of his fidelity.

In these circumstances I am clearly of opinion that so long as he holds the passport he is within the meaning of the Statute a man who, if he is adherent to the King's enemies in the realm or elsewhere, commits an act of treason.

There is one other aspect of this part of the case with which I must deal. It is said that there is nothing to prevent an alien from withdrawing from his allegiance when he leaves the realm. I do not dissent from this as a general proposition. It is possible that he may do so even though he has obtained a passport. But that is a hypothetical case. Here there was no suggestion that the appellant had surrendered his passport or taken

any other overt step to withdraw from his allegiance, unless indeed reliance is placed on the act of treason itself as a withdrawal. That in my opinion he cannot do. For such an act is not inconsistent with his still availing himself of the passport in other countries than Germany and possibly even in Germany itself. It is not to be assumed that the British authorities could immediately advise their representatives abroad or other Foreign Governments that the appellant, though the holder of a British passport, was not entitled to the protection that it appeared to afford. Moreover the special value to the enemy of the appellant's services as a broadcaster was that he could be represented as speaking as a British subject and his German Work Book showed that it was in this character that he was employed, for which his passport was doubtless accepted as the voucher.

The second point of appeal (the first in formal order) was that in any case no English court has jurisdiction to try an alien for a crime committed abroad and your Lordships heard an exhaustive argument upon the construction of penal statutes. There is, I think, a short answer to this point. The Statute in question deals with the crime of treason committed within, or, as was held in *R. v. Casement*, without the realm; it is general in its terms and I see no reason for limiting its scope except in the way that I indicated earlier in this opinion, *viz.*: that, since it is declaratory of the crime of treason, it can apply only to those who are capable of committing that crime. No principle of comity demands that a State should ignore the crime of treason committed against it outside its territory. On the contrary a proper regard for its own security requires that all those who commit that crime, whether they commit it within or without the realm, should be amenable to its laws. I share to the full the difficulty experienced by the Court of Criminal Appeal in understanding the grounds upon which this submission is based, so soon as it has been held that an alien can commit, and that the appellant did commit, a treasonable act outside the realm. I concur in the conclusion and reasons of that court upon this point.

Finally (and these are the third and fourth grounds of appeal to the Court of Criminal Appeal) it was urged on behalf of the appellant that there was no evidence that the renewal of his passport afforded him or was capable of affording him any protection or that he ever availed himself or had any intention of availing himself of any such protection, and if there was any such evidence the issue was one for the jury and the Judge failed to direct them thereon.

Upon these points too, which are eminently matters for the Court of Criminal Appeal, I agree with the observations of that court. The document speaks for itself. It was capable of affording the appellant protection. He applied for it and obtained it, and it was available for his use. Before this House the argument took a slightly different turn. For it was urged that there was no direct evidence that the passport at any material time remained in the physical possession of the appellant and that upon this matter the jury had not been properly directed by the Judge in that he assumed to determine as a matter of law a question of fact which it was for them to determine. This point does not in this form at least appear to have been taken before the Court of Criminal Appeal and your Lordships have not the advantage of knowing the views of the experienced Judges of that court upon it. Nor, though the importance of keeping separate the several functions of Judge and jury in a criminal trial is unquestionable, can I think that this is a question with which your Lordships would have had to deal in this case, if no other issue had been involved. For it is clear that here no question of principle is involved. The narrow point appears to be whether in the course of this protracted and undeniably difficult

case the Judge removed from the jury and himself decided a question of fact which it was for them to decide. This is a matter which can only be determined by a close scrutiny of the whole of the proceedings.

My Lords, this is a task which in the circumstances of this case your Lordships have thought fit to undertake. I do not propose to examine in detail the course of the trial and the summing-up of the Judge, though I may perhaps be permitted to say that it was distinguished by conspicuous care and ability on his part. But having read the whole of the proceedings I have come to the clear conclusion that the Judge's summing-up is not open to the charge of misdirection. It may well be that there are passages in it which are open to criticism. But the summing-up must be viewed as a whole and upon this view of it I am satisfied that the jury cannot have failed to appreciate and did appreciate that it was for them to consider whether the passport remained at all material times in the possession of the appellant. Upon this question no evidence could be given by the Crown and for obvious reasons no evidence was given by the appellant. It has not been suggested that the inference could not fairly be drawn from the proved facts if the jury thought fit to draw it and I think that they understood this and did draw the inference when they returned the general verdict of "Guilty." This point, therefore, also fails.

My Lords, I am asked by Lord Simonds to say that he concurs in the opinion which I have just read.

*[Lords Macmillan and Wright stated that they too were in agreement with the Lord Chancellor.]*

Lord Porter: My Lords, I have already stated that I agree with your Lordships in thinking that the renewal of William Joyce's passport, obtained on 24th August, 1939, was evidence from which a jury might have inferred that he retained that document for use on and after 18th September, 1939, when he was proved first to have adhered to the enemy, and, therefore, I can deal with this part of his appeal very shortly.

It is undisputed law that a British subject always, and an alien whilst resident in this country, owes allegiance to the British Crown and, therefore, can be guilty of treason. The question, however, remains whether an alien who has been resident here, but leaves this country, can, whilst abroad, commit an act of treason. The allegiance which he owes whilst resident in this country is recognised in authoritative text-books and the relevant cases to be owed because, as Hale (*Pleas of the Crown* (1778), Vol. I, p. 59) says, "the subject hath his protection from the King and his laws."

If then he has protection he owes allegiance, but the quality of the protection required has still to be determined. On behalf of the appellant it was strenuously contended that unless the alien was enjoying the protection of British law he owed no allegiance. My Lords, I think that this is to narrow the obligation too much. Historically the protection of the Crown through its dispensing power was afforded to the alien in this country earlier than the legal protection which came later. Therefore any protection, whether legal or administrative, would in my view be enough to require a corresponding duty of allegiance.

It was said in the second place, however, that in no case could an alien, however long he had been resident here, commit an act of treason whilst he was abroad. This argument again seems to me to limit unduly the extent of his obligation. It is in contradiction of the resolution of the Judges in 1707, whereby it was declared that, if an alien who has been resident here goes abroad himself but leaves his family and effects here under the same protection, the duty (i.e., of allegiance) still continues. This resolution has been criticised as being merely the opinion of the Judges

in consultation with prosecuting counsel, and not given as a decision in any case. The criticism is true, but the resolution has been repeated in text-book after text-book of high authority, and though not authoritative as a legal decision, it still has the weight of its repetition by great lawyers and the fact that it is nowhere challenged. Foster, Hale, East, Hawkins, Chitty and Bacon all set it out. Blackstone alone omits it, but Blackstone was giving a general view of the laws of England, and an omission to set out a particular extension of the general rule is not necessarily a denial of its existence. Equally the fact that many cases also state only the general rule in cases where no more is required is not a denial of the existence of certain modifications or extensions of it.

It is true that even in the case with which the resolution deals the alien, though absent himself, is vicariously protected by the laws of this country in the person of his family and effects, but it is still no more than protection. Does then the possession of a passport afford any such protection as that contemplated by the rule? I think it does. Even after war is declared, some protection could be afforded to holders of British passports through the protecting power, and, again, it would be useful and afford protection in neutral countries. In *R. v. Brailsford*, Lord Alverstone says (1905 2 K.B. 730, at p. 745), "*It will be well to consider what a passport really is. It is a document issued in the name of the Sovereign on the responsibility of a Minister of the Crown to a named individual, intended to be presented to the Governments of foreign nations and to be used for that individual's protection as a British subject in foreign countries?*" and the late Sir William Malkin in the *Law Quarterly Review*, Vol. 49, p. 493, speaks of "*The extensive, though perhaps somewhat ill-defined, branch of international law which may be called . . . 'the diplomatic protection of citizens abroad.'*"

It must be remembered that the matter to be determined is not whether the appellant took upon himself a new allegiance, but whether he continued an allegiance which he had owed for some twenty-four years, and a lesser amount of evidence may be required in the latter than in the former case. I cannot think that such a resident can in wartime pass to and fro from this country to a foreign jurisdiction and be permitted by our laws to adhere to the enemy there without being amenable to the law of treason. I agree with your Lordships also in thinking that if an alien is under British protection he occupies the same position when abroad as he would occupy if he were a British subject. Each of them owes allegiance, and in so doing each is subject to the jurisdiction of the British Crown.

"The law of nations," says Oppenheim (*International Law*, 5th Edn., Vol. 1, p. 266), "does not prevent a State from exercising jurisdiction within its own territory over its subjects travelling or residing abroad, since they remain under its personal supremacy." Moreover, in *R. v. Casement*, the point was directly decided in the case of a British subject who committed the act of adhering to the King's enemies abroad, and the decision was not seriously controverted before your Lordships. But, my Lords, though the renewing of a passport might in a proper case lead to the conclusion that the possessor, though absent from the country, continued to owe allegiance to the British Crown, yet in my view the question whether that duty was still in existence depends upon the circumstances of the individual case and is a matter for the jury to determine. In the present case, as I understand him, the Judge ruled that in law the duty of allegiance continued until the protection given by the passport came to an end—i.e., in a year's time—or at any rate until after the first act of adhering to the enemy, which I take to be the date of the appellant's employment as broadcaster by the German State on 18th September, 1939.



The Court of Criminal Appeal take, I think, the same view, but since your Lordships, as I understand, think otherwise, I must set out the facts as I see them. The appellant, admittedly an American subject, but resident within this realm for some twenty-four years, applied for and obtained a passport, as a British subject, in 1933. This document continued to be effective for five years, and was renewed in 1938 and again on 24th August, 1939. Extensions are normally granted for one year, and that given to the appellant followed the normal course. It would, I think, not be an unnatural inference that he used it in leaving England and entering Germany, but in fact nothing further was proved as to the appellant's movements, save that his appointment as broadcaster by the German State, dated 18th September, 1939, was found in his possession when he was captured, and that at any rate by 10th December he had given his first broadcast. Nothing is known as to the passport after its issue, and it has not since been found.

My Lords, for the purpose of establishing what the Judge's ruling was, I think it necessary to quote his own words to the representatives of the Crown and of the prisoner before they addressed the jury. They are as follows:

*I shall direct the jury on count 3 (the only material count) that on 24th August, 1939, when the passport was applied for, the prisoner beyond a shadow of doubt owed allegiance to the Crown of this country and that on the evidence given, if they accept it, nothing happened at the material time thereafter to put an end to the allegiance that he then owed. It will remain for the jury, and for the jury alone, as to whether or not at the relevant dates he adhered to the King's enemies with intent to assist the King's enemies. If both or either of you desire to address the jury on that issue, of course, now is your opportunity.*

After that ruling both counsel proceeded to address the jury, the Defence submitting that the appellant had not adhered to the King's enemies, the Attorney-General that he had. No other topic was touched upon by either of them, and in particular no argument was addressed to the question whether the appellant still had the passport in his possession and retained it for use or as to whether he still owed allegiance to the British Crown. After counsel's address to the jury the Judge summed up, and again I think I must quote some passages from his observations.

One such is:

*Under that count (i.e., count 3) there are two matters which have got to be established by the Prosecution beyond all reasonable doubt. . . . The first thing that the Prosecution have to establish is that at the material time the prisoner, William Joyce, was a person owing allegiance to our Lord the King. . . . My view, I have already intimated . . . as a matter of law is, if you as a jury accept the facts which have been proved in this case beyond contradiction—of course you are entitled to disbelieve anything you wish—if you accept the facts which have been proved and not denied in this case, then at the time in question, as a matter of law, this man William Joyce did owe allegiance to our Lord the King, notwithstanding the fact that he was not a British subject at the material time. Now, members of the jury, although that is a matter for me entirely and not for you, I think it will be convenient if I explain quite shortly the reasons by which I have arrived at that view, partly for your assistance, explanation, and perhaps for consideration hereafter in the event of this case possibly going to a higher court.*

Again he said:

*None the less I think it is the law that if a man who owes allegiance by having made his home here, having come to live here permanently, thereby acquiring allegiance, as he undoubtedly does, if he then steps out of this realm armed with*

*the protection which is normally afforded to a British subject—improperly obtained, it may be, but none the less obtained . . . using and availing himself of the protection of the Crown in an executive capacity which covers him while he is abroad, then in my view he has not thereby divested himself of the allegiance which he already owed.*

Later he says:

*So between 24th August and 18th September, 1939, armed with a British passport, he had somehow entered Germany. Now, members of the jury, thereafter up until 2nd July, 1940, when his passport ran out, he remained under such protection as that passport could afford him during his stay in Europe.*

Once again he says:

*I do not think I am in any way extending the principles of the law in saying that a man who in this way adopts and uses the protection of the sovereign to whom he has already acquired an allegiance remains under that allegiance and is guilty of treason if he adheres to the King's enemies.*

*Members of the jury, I accordingly pass from that aspect of the matter ; that is my responsibility. I may be wrong ; if I am I can be corrected. My duty is to tell you what I believe to be the law on the subject and that you have to accept from me, provided you believe those facts about the passport, going abroad and so forth. If you do not believe that, you are entitled to reject it and say so, because you are not bound to believe everything, but if you accept the uncontradicted evidence that has been given, then in my view that shows that this man at the material time owed allegiance to the British Crown.*

*Now if that is so, then the matter passes into your hands, and from now onwards I am dealing with matters which are your concern and your concern alone, with which I have got nothing to do ; they are matters of fact, and the onus of proving those facts is upon the Prosecution from first to last, and it never shifts.*

*Now what have they got to prove ? They have got to prove that during this period, as I have already indicated, this man adhered to the King's enemies without the realm, namely, in Germany.*

The Judge then refers to a broadcast, of which there was uncontradicted evidence that it had been made before 10th December, 1939, to the prisoner's engagement as a German broadcaster to Britain, and to the prisoner's statement, which was put in evidence by the Crown and from which I need only quote the words:

*Realising, however, that at this critical juncture I had declined to serve Britain, I drew the logical conclusion that I should have no moral right to return to that country of my own free will and that it would be best to apply for German citizenship and make my permanent home in Germany.*

After reading the statement the Judge added:

*I think that is the whole of the very short material upon which you have to come to the conclusion as to whether or not it is proved to your satisfaction beyond all reasonable doubt that during the period in question this man adhered to the King's enemies, comforted and aided them with intent to assist them, and that he did so voluntarily. Those are the matters which you have to consider.*

My Lords, I have read and re-read the summing-up as a whole, and I think I have quoted all the material passages from it. Whether I pay regard to its general import or confine myself to the particular passages set out above, I cannot read the words of the Judge as doing other than ruling that in law the appellant continued to owe allegiance to His Majesty, on 18th September, 1939, on 10th December, 1939, and, indeed, until 2nd July, 1940, and leaving to the jury only the question whether during this period

the appellant adhered to the King's enemies. The passage in the summing-up contained the words "provided you believe those facts about the passport, going abroad and so forth" in my opinion merely instructed the jury that they had to be satisfied that the accused man did obtain a renewal of his passport, did go abroad, and did make a statement, but that if they were so satisfied, then in law the prisoner continued to owe allegiance at all material times after he left this country. If it means more than this, I should regard it as a totally inadequate direction as to what must be proved in order to show that the allegiance continued after he left this country. But I do not think it does mean more than I have indicated.

As I have stated, the renewal of the passport on 24th August, 1939, was, in my view, evidence from which a jury might infer the continuance of the duty of allegiance. What the Prosecution have to show is that that duty continued at least until 18th September. The Judge, as I see it, regards the renewal as proving conclusively that the duty continued until the passport ceased to be valid, unless some action on the part of the Crown or the appellant was proved which would put an end to its protection. The Court of Criminal Appeal, in my opinion, took the same view. Their words are:

*We have to look at the evidence in this case and upon that evidence to decide whether the trial Judge was right or wrong in holding as a matter of law that on 18th September, 1939, and between that date and 2nd July, 1940, this appellant did owe allegiance to the King. We agreed with Tucker, J., that the proper way of approaching that question is to see whether anything had happened between 24th August, and 18th September, to divest the appellant of that duty of allegiance which he unquestionably owed at the earlier of those dates.*

This ruling, as I see it, can only mean that the appellant's duty of allegiance remained in force until 2nd July, 1940, unless it was shown by him or on his behalf that something had occurred to put an end to that duty. It puts the onus on him to show some action terminating that obligation. The passport was never found again, and he may have used it only to gain admittance to Germany and may then have discarded it. Indeed, his statement, if believed, indicates that this was his object, and the mere fact that the renewal was for a year proves nothing, since, as was proved in evidence, that is the normal period of extension. There is no evidence that he kept it for use on or after 18th September. If I thought that the obtaining of the passport on 24th August proved in law that the appellant retained it for use at least until 18th September, unless he was shown to have withdrawn his allegiance, I should accept this ruling. But I do not think it correct. It could only be supported on the ground that allegiance continues until the appellant shows that it is terminated.

The Attorney-General supported this contention by a reference to *Archbold's Criminal Pleading, Evidence and Practice*, 31st Edition, at page 330, where it is stated that if a matter be within the knowledge of the accused and unknown to the Crown the onus of proof is cast upon the former. For this proposition *R. v. Turner* is said to be an authority. But that case has been explained as dependent upon the special provisions of the Game Laws, and as being, therefore, not of general application. The true principle is, I think, set out in *Phipson on Evidence*, 8th Edition, page 34, and *Best on Evidence*, 12th Edition, page 252, and is explained by Holroyd, J. (himself a party to the judgment in *R. v. Turner*), in *R. v. Burdett*:

*[The rule in question] is not allowed to supply the want of necessary proof, whether direct or presumptive, against a defendant of the crime with which he is charged, but when such proof has been given, it is a rule to be applied in considering the weight of evidence against him, whether direct or presumptive,*

*when it is unopposed, un rebutted, or not weakened by contrary evidence, which it would be in the defendant's power to produce, if the fact directly or presumptively proved were untrue.*

If this be the true principle, the failure of the prisoner to give evidence as to his dealing with the passport goes to increase the weight of the evidence against him, but does not make the evidence of his applying for and receiving it proof conclusive in law that he continued to retain it for use or at all. That he received it may be some proof to go to the jury that he retained it, but it is no more; it is not a matter upon which a court is entitled to rule that a jury must draw the inference that he retained his allegiance. Indeed, at one point in his argument the Attorney-General used language which, in my view, accepted this as the true principle when he said:

*I put the passport merely as evidence of the existence of protection. If he (i.e., the accused) discarded it on his return that might make a difference.*

To this observation I would merely add that the renewal of the passport was at best but some evidence from which a jury might infer that the duty of allegiance was still in existence. Unless, however, the accused man continued to retain it for use as a potential protection, the duty of allegiance would cease, and it was for the jury to pronounce upon this matter.

I do not understand your Lordships to rely upon the proviso to section 4 of the Criminal Appeal Act, nor do I think it could be said that no substantial miscarriage of justice had occurred, if I am right in considering that the matter should have been left to the jury. The test has been laid down by your Lordships' House to be whether a reasonable jury properly directed must have come to the same conclusion. In the present case a reasonable jury properly directed might have considered that the allegiance had been terminated. Against the mere receipt of the passport there has to be set the fact that its possession was at least desirable if not necessary to enable the accused man to proceed to Germany from this country, the fact that it was not found in his possession again or anything further known of it, his statement as to his intention of becoming naturalised in Germany and his acceptance of a post from the German State. At any rate these were matters for a jury properly directed to consider. They were not directed on them and, as I have stated in my view, they were told that the matter was one of law and not for them.

My Lords, the question of the extent to which an alien long resident in this country continues to owe allegiance after he has left it and whether the request for and acceptance of a passport makes the duty of allegiance still due until the protection of that passport ceases by effluxion of time or at least for some period after its issue is, and has been certified to be, a point of law of exceptional public importance. One matter to be decided in solving that question is the boundary line between the functions of a Judge and those of a jury. Apart from this the principle that questions which are rightly for the jury should be left to them and that a proper direction should be given is, as I think, also of great public importance. The one matter concerns this country only in the exigencies of war, though then no doubt it is of vital importance: the other is a necessary element in the true administration of the law in all times of peace and war. If the safety of the realm in wartime requires action outside the ordinary rule of law, it can be secured by appropriate measures such as a Defence of the Realm Act, but the protection of subject or foreigner afforded through trial by jury and the due submission to the jury of matters proper for their consideration is important always, but never more important than when the charge of treason is in question.

For these reasons I would myself have allowed the appeal.

## OTHER RECENT TRIALS

READERS of the following brief accounts of some twenty or thirty trials of British subjects accused of assisting the enemy in the war will note that, even when their offences seem to be largely the same, the charges brought against them fall into two categories: (1) high treason, and offences against the Treachery Act of 1940; and (2) offences against the Defence (General) Regulations, 1939, the relevant section of which, 2 A, reads thus: "If, with intent to assist any enemy, any person does any act which is likely to assist an enemy or to prejudice the public safety, the defence of the realm or the efficient prosecution of war, then, without prejudice to the law relating to treason, he shall be guilty of an offence against this Regulation and shall, on conviction on indictment, be liable to penal servitude for life."

The all-important distinction between the two classes of offence lies, not in the acts alleged against the prisoner, but in the penalty. Only one sentence can be passed on a man convicted of treason or "treachery"—death. The law knows no lesser penalty for these offences, and neither the trial Judge nor the Court of Criminal Appeal can pass one. But in the case of a breach of the Defence Regulation, while penal servitude for life is the maximum sentence, the Court is empowered to substitute for it any shorter term of imprisonment or even, as happened more than once, a mere bind-over. So in effect, where the authorities decided to indict a man for treason, he could not hope if found guilty (and there was usually little chance of any other verdict) to escape the scaffold except by a reprieve. But there were many cases where the prisoner's offence, gross though it was, was mitigated by youth or foolishness or even the small importance of his assistance to the enemy; in such cases, it will be seen, the Defence Regulations were made the basis of the charge.

The authorities certainly exercised their discretion most reasonably and even mercifully, but it was and remains unsatisfactory and contrary to the spirit of English judicial procedure that the decision of an executive department should thus pre-judge a prisoner's fate. And it must have been a most unpleasant task for that department to undertake. This seems an additional argument for a change in the law which, on a conviction for treason as for murder, would permit in proper cases a verdict which did not entail the full rigour of capital punishment.

## (1) JACK ALCOCK

This 32-year-old Flight-Sergeant in the R.A.F., an air-gunner from Manchester, was court-martialled at Uxbridge in August 1945. The Prosecution stated that, after baling out on a flight over Mannheim, he voluntarily gave the Germans information about R.A.F. types and formations, tried to persuade fellow-prisoners to do the same and, finally, "when it was his duty to use his utmost endeavours to escape, he improperly accepted a parole from the German authorities."

A police officer produced a long statement made by Alcock on his return to London in May, 1945, and a German officer was brought over to identify him as having been selected to work for the Germans.

He was sentenced to two years' hard labour and discharge with ignominy from the Service.

## (2) JOHN AMERY

This ne'er-do-well offshoot of a distinguished English family, who was 33 years old when he was tried for high treason at the Old Bailey, had come into contact with the police more than once before the war. He was in Spain during

some part of the Civil War and afterwards went to France in 1940. His later adventures are set out at length, if not wholly accurately, in a statement which will be reproduced later. He was arrested in Italy by local "co-belligerents," in April, 1945, handed over to the British troops and flown to England.

He was charged before the Chief Magistrate, Sir Bertrand Watson, at Bow Street, on 30th July, 1945, with high treason in Germany and Italy from the 22nd June, 1941, to his arrest on the 25th April, 1945.

Evidence at this preliminary hearing showed that he had urged British prisoners of war and internees in France and elsewhere to join a Nazi-sponsored force called "The Legion of St. George," which was, he said, to fight against the Bolsheviks but not against the British. In a manifesto he issued on the 20th April, 1943, he declared that 150,000 people were in jail in Britain because they refused to take up arms in the "fratricidal war" against Germany! Other paragraphs of this idiotic (but undoubtedly treasonable) document read:

"Hundreds of soldiers have volunteered to join the Legion and many R.A.F. aeroplanes are coming over to us.

"It is up to you civilians to take a hand to show we intend giving the world proof that we are not all sold out to the Jew and the plutocrat. The world is watching us. Europe expects every civilised man will do his duty. National England desires that you will show yourselves worthy of Nelson's immortal signal.

"We are going to write a new page in the history of the British Empire. Englishmen never, never will be slaves of the plutocrat tyranny. Pay no attention to opposition. In these vital days when we are before the bar of civilisation I beg and demand that we should put aside all hesitation, lies and prejudice that led us to where we are, and take this immense opportunity which I have obtained, and with me and by me and all those who have already joined, that you will opt National for England and St. George."

British, French and Belgian witnesses were called by the Prosecution. A private in the Black Watch said that, when Amery invited him in a French prisoner-of-war camp to join the Legion, he struck at Amery and was punished for this by being put on bread and water for four days and confined to a cell for three weeks. Two civilian internees stated that Amery had told them of British aeroplanes joining the Legion, while a third said that Amery claimed to be acting both for a committee in England and for the Vichy Government. Amery wished to shake hands with him, said this witness, but "I told him I was not in the habit of shaking hands with traitors, and walked out." These and other witnesses said that Amery was booed and hustled when he made approaches to prisoners—which recalls that the same thing happened to Roger Casement in the last war when he sought to enlist Irish prisoners of war in his German-sponsored "Irish Brigade."

Other witnesses told of Amery's speeches in Antwerp and in Paris, in which he hysterically abused British policy and British politicians, cried "*Vive Hitler!*" and declared himself a true patriot in that he wished Britain to become allied with Nazi Germany against Bolshevik Russia. Evidence was also given about some of his broadcast speeches, which—as many listeners in this country will remember—were screeching, incoherent rododomontades; he was, however, introduced by the German radio announcers with portentous solemnity as a person of outstanding importance in British affairs.

Statements by Amery were put in, including one in which he described a visit to Quisling in Norway, who "was kind enough to say that my activity was a great help to him and other friends of Germany." The main exhibit was a long document which he typed and signed for the British authorities in Italy after his arrest. Portions of it were as follows:

"After a youthful career which was somewhat chequered, and which ended in my bankruptcy in the early months of 1937, I went to Europe, and practically

left England definitely except for some occasional visits. In Spain, in France, and particularly with the French politician Jacques Doriot, I extensively studied Communism. This led me to Austria, Czechoslovakia, and various other countries, including Italy and Germany. At the outbreak of the war I was in San Sebastian, in Spain. I remained there and in Portugal until March of 1940, when I returned to Paris. . . . In April I departed to the south of France to wind up some business matters.

"While I was thus engaged the French Army collapsed. The armistice was signed, and I found myself virtually trapped in the free zone of France, where by the terms of the armistice outgoing visas were not granted to British subjects of military age. I had not ever been called for military service in view of my permanent residences being, the one in Madrid, the other in Paris. I therefore remained in the South of France, doing nothing except hoping that some arrangement would be come to concerning the stopping of the war, all through the winter and early summer of 1940-41.

"In June, 1941, the war with the Soviets broke out. It was my considered opinion, and that also of my friends, and notably Doriot and Déat,<sup>1</sup> that Europe was in the greatest peril of a Communist invasion; that this invasion would sweep the whole Continent; and that nothing could stop it unless the different countries of Europe pushed through a social revolution which would spike the guns of the Communists in their world-wide revolutionary activities. It was also our view that the Jewish race was mixed up and working hand-in-glove with Moscow. In consequence of this it came as a very great shock to me when I heard that England and Soviet Russia had become allies—so much so that I thought that the people responsible in London were acting in a manner that no longer coincided with British Imperial interests. On this point my book *England Faces Europe*, published in Berlin in June, 1943, gives the whole case, as also the general political line I was aiming at.

"I went therefore to Vichy to see what was going on, determined to do what I could to create a situation whereby a united front of all nations might be organised against Russia. I found that there was no intention whatsoever of carrying out any social revolution—that, in a word, Vichy was an ultra-reactionary Government, of priests, the worst type (in my opinion) of French industrialists, and militarists.

"If I did not take kindly to these people, they did not like me either, nor did they like Doriot or Déat. Also in November, 1941, on a frivolous pretext (hostage for some French consul arrested by the British in Syria) they took me from my bed at three o'clock in the morning and threw me into jail at Vals les Bains, where I found myself with Paul Reynaud and Mandel, of all people. The united efforts of my friends Jeannine Amery-Barde and Doriot extracted me from there after eighteen days. Thereafter I was only allowed to reside in the Isère.

"In the county town, Grenoble, and later Paladru I planned what I could do usefully. The United States authorities, representing the British interests, seemed to find the Russian alliance normal. A little article that I had written protesting against the bombardments of civilians by the R.A.F. had brought down numerous letters of great displeasure on my head. Neither Doriot nor Déat dared enter the Vichy free zone. I was cut off from everyone, including England.

"I decided at this period to attempt to talk to Dino Grandi, previously Italian Ambassador in London, to see if Italian diplomacy was not capable of organising an end to this kind of civil war between the civilised when the barbarians were at the gate. Accordingly I handed a letter to the Italian

<sup>1</sup> Jacques Doriot and Marcel Déat were former Left Wing politicians who had become the leaders of the French Fascists and pro-Nazis.

Consul in Grenoble, Manfredi, suggesting that Grandi might find an interest in the European situation generally either to have a meeting with me or arrange for one. To this letter I received no reply. In view of this I decided to enlist in the Finnish armies, and offered my services to Helsinki, where my skis had gone and various other things, in their first anti-Soviet war. I received a charming reply, which was a negative as nicely as one could say it.

"Now it became my turn to be visited by a certain Graf Ceschi, German armistice chief for Savoy, whom I had known slightly in Vienna, my opinions having probably come to his ears. The suggestion was made that I should go to Germany and discuss my point of view with them. I replied that I was willing, but that I desired a formal guarantee that I could return without let or hindrance should we disagree. This he was unable to give me. He used his influence, however, to obtain from Vichy permission for me to go among my friend's family near Bergerac (also a free zone), telling me that he would occupy himself in attempting to obtain the guarantee I desired. On the 26th September, 1942, there arrived in Bergerac a certain Captain Werner, whom I had known in my meetings with Ceschi. He gave me the required assurances and we departed almost immediately.

"After a few days in Paris, and travelling under the names of Mr. and Mrs. Browne, I arrived in Berlin early in October, 1942, where I began to discuss these problems with a certain Dr. Hesse. He had a kind of autonomous situation with Minister Schmidt (Hitler's interpreter). As is well known, there were numerous other Englishmen in Berlin, notably William Joyce and his friends, and Baillie-Stewart and his. These people had come to Germany on or before the declaration of war. Also they had adopted German nationality and considered themselves Germans. In consequence their views and outlook widely differed from mine. The first depended from the Propaganda Ministry, with which I had never had anything to do; and the second from the Radio Department of the Foreign Office, with whom I had only friendly, but no official, relations.

"It was in my view quite insane to carry on as they did calling the British 'the enemy' and so forth, as was their custom. I told Dr. Hesse perfectly frankly that I was not interested in a German victory as such, that what interested me was a just peace where we could all get together against the real enemies of civilisation, and that the British Empire as it was, intact, must be a part of this and not a dependant of such a regroupment; that I was perfectly aware of the enormous losses of the Germans of the preceding winter in Russia, as also the folly of their policy in Vichy, in Croatia, and elsewhere; that I considered, if, as an Englishman, with the collaboration of others, we could speak uncensored and uninterfered with in a special British hour on the radio, and they would give precise guarantees, at least to us, concerning British Imperial territory, and consider their policy as remaining based on the proposals of the German Chancellor to the British Government of July, 1940, then we could attempt something.

"In general he was of the opinion that we were asking a very great deal without giving any very great assurance of success. He declared to know nothing about, and have no interest in, questions not concerning England, being uniquely interested in that. He also said that he did not possess the radio, which depended on the Propaganda Ministry, and he must inquire into these things in detail. He asked me how much I wanted for myself. When I told him that, far from wanting anything, I was not disposed to accept anything, other than that he considered me as a guest having no resources of my own available, he seemed quite taken aback.

"I therefore waited in Berlin a fortnight for a reply. When I next saw him he told me the following—that I could consider myself a guest of the Reich, that I could go where I pleased, that he suggested I should make on the radio



a series of weekly speeches, which would be officially dissociated from the German senders and entirely uncensored. At the end of this time the problem would be once more wholly revised, he hoped to my satisfaction. I accepted these conditions [and put] the text of these speeches, some ten in number, presumably at the readers' disposal.

"At the end of this time the situation remained unchanged. I tackled Hesse on this subject, pointing out that it was absurd for me as an Englishman to talk about us all getting together if, five minutes later, from the same station, another Englishman was to yell out abuse of my countrymen. He told me he fully realised this, but was powerless. I told him, therefore, that I desired to betake myself to Paris to talk these matters over with my French friends, and to consider what next might be done in these circumstances. He replied that he had already given me his assurance as to my complete liberty, and that he would grant me my passports immediately. In consequence, January, 1943, found me in Paris. The news from Russia was getting pretty bad, and that in France worse—all German-occupied Europe in fact.

"We were very disturbed. The problem, which amounted to a vicious circle, was this. We were partisans of a social revolution and of a getting together of all European nations in a Customs union, etc. (see *England Faces Europe*). The Germans, however, were controlling Europe, and instead of (Norway excepted) carrying out any social revolution at all they were getting in with the reactionaries, and, what was worse, the kind of people who were uniquely interested in getting rich quick at anybody's expense. Moreover, they seemed to possess no one who understood the other nations of Europe, their people and mentality, and more especially the Latins. This was the rule among the Embassies and Army chiefs. Among the S.S. and political police (not to be confused with the *Sipo* and *Gestapo*) things were individually much better, but carried little practical weight, strange as it may seem. On the other hand, the only people who were fighting the Soviets seriously were the Germans. . . .

"Doriot's view was that it was better to go to the front in Russia and to make things abundantly clear, 'and when I come back with the Iron Cross I will send this bloody embassy to hell.' He thought, and I equally, that Vichy must be overthrown, peace made between Germany and France, and an end of occupants and occupied, the creation of Europe. Déat's view leaned more to peaceful and continual pressure on Abetz<sup>1</sup> until finally he grasped it.

"I returned to Berlin, bearing numerous documents of my own, of Déat's and other people, confirming all that we had always said concerning the mad foreign policy that was being carried on. I tackled Hesse again. He was a man who had never got over the criminal folly of the bombardment of England in '40-'41, and he listened patiently to us. I told him that in my view we must also create a British anti-Bolshevist Legion, however small, and that perhaps, on the things going on in other countries of Europe, it would be possible for me to attempt to help some sort of improvement of the situation based on the following principle—if England saw that Europe was uniting against Bolshevism, she would come in as well. The problem would be shifted away from Germany, 'the mad dog of Europe,' to all collaborating to a common good.

"On 7-8th April my beloved friend and brave political revolutionary Jeannine Barde died. I buried her in her native Bergerac, went to see her child, and stayed in France from the 15th April to June, 1943.

"I paused at St. Denis (civilian internee camp) to test whether there might or might not be volunteers for the British Legion. Considering the general difficulties, I was impressed by the fact that out of some thirty or forty people there were four or five volunteers. But I was too distraught to pay any great attention at the time.

<sup>1</sup> Otto Abetz was Hitler's special representative in Paris.

"Returning to Berlin, I found the British Legion progressing dreadfully slowly, blocked for all kinds of technical reasons it would be tedious to go into here. I had signed a kind of mobilisation of volunteers proclamation, which I had drawn up myself, but I have never known whether this was effectively ever used or not. Eventually the S.S. took the whole affair over. Apparently a certain *Sturm Bahnführer*, Vivian Stranders, an Englishman, had a great deal to do with this, and, although I had never met him, he had a very great dislike of my person. In consequence, I handed my 'baby' to the S.S. with my wishes of success.

"The summer passed by. During this time Hesse offered me the control of a secret radio station, to be in English for England. But, the whole affair having to pass through the Propaganda Ministry and Joyce's friends, I accepted it only to return it without its having, with me, effected a single transmission.

"In the end of September I returned to Paris. Once more much political talk, and on the 4th October I remarried at the German Consulate. Politically the situation remained almost unchanged.

"The 23rd November found me back in Berlin, and that night Berlin was bombed to pieces. I was granted a distinction for exceptional bravery in that affair, but lost most of my belongings. With Hesse's consent I set up in Paris the next week. Then followed visits to Prague, in January, 1944, and other places, including Norway and Belgium. In all this went the Movietone, Press conferences, etc., and sometimes radio interviews, as also a visit to the Atlantic Wall and Valenciennes. Made innumerable contacts and so forth.

"In Paris I found a pressing telegram at the end of May asking me to rejoin Salzburg. I found Hesse there, displeased at my activities, probably not personally, but from Ribbentrop. . . . I was grieved and surprised, my other political friends having been more than contented with these results. Also it transpired, after patient inquiry, that in almost every instance every report was double—one favourable, one not—depending whether it came from a European revolutionary source or a reactionary one. This brought things to a standstill.

"After two days Hesse asked me, 'in view of the present situation of an impending debarkation in France,' to do anything I liked, but leave France to the military. I returned to Paris at once, where it became obvious that the 'Partisan' movement which the Germans persisted in considering a police problem, was a very serious political factor (we had been saying so for eighteen solid months and more).

"Wondering whether we would ever get to something sensible, and also at the desire of my French friends who wished me once again to tackle Berlin, I returned there in June, 1944. I remained at Haus-am-See, near Berlin, at Gatow throughout the *Putsch*, the disasters west and east, and thought things pretty hopeless. At Hesse's wish I spoke a speech on the radio once more, because he said that it was being thought I was a prisoner of the *Gestapo*.

"At the end of September I received an invitation from the Italian Government, telling me that Mussolini wished to see me. I set out in the middle of October, and saw him on the Lake of Garda at the end of that month. Contrary to what has often been said, he was in the best of health, and we talked for several hours. His view was, in brief, that he had made a great mistake in 1922 in not carrying through what he was now attempting—i.e., to create a social republic—but that he was optimistic that this could be done, even with the increasing military difficulties, and that once Northern Italy was going properly he, who had after all been responsible for organising the Peace of Munich, felt himself capable of throwing his whole person into the balance and obtaining the peace we had for years been seeking.

"In this line he asked me to assist him. I consented readily, all the more so that he was much more likely to succeed in negotiations where the Germans

had so regularly failed. I *résumé*d the Italian situation in an annexe document (*rapport de la situation Italienne*). In Italy I spoke in Italian to the Italians over the republican network, uncensored, and made some speeches in Genoa, Turin, Biella, Cremona, and Milan.

"At last in Italy, with Mussolini's gathering efforts and his intention to set up the Government in Milan, we seemed to be making some practical progress.

"In the end of January the German Ambassador, Rahn, told me that Berlin had asked for me urgently. Saying good-bye to Mussolini, who asked me to return as soon as possible, I went to Germany, going to Constanzt. From there I contacted Berlin, who had never asked for my recall at all. It became apparent that this was simply a machination of certain people whose names are given in the '*Rapport Italien*,' and, of course, of Rahn. I was to learn here of the death of Doriot, whose funeral at Mangen I attended at the end of February, 1945.

"Hesse told me to go back to Italy and tell the Embassy to 'mind their own business.' To this effect he had me accompanied by the *Ritter-Kreuztraeger*, Dr. Brenner, to Italy. Brenner had some talks with Rahn, which resulted in that I could do what I liked, but he, Rahn, would have nothing to do with it.

"Mussolini had by this time, mid-April, moved definitely to Milan, where I saw him on the 23rd April. As is known, the military situation had so degenerated by this time that his view was that there remained only to betake ourselves to the mountains, where a great stock of food, munitions, radio apparatus, etc., was to be laid in the area Como, following the winding Swiss border to the Stelvio and coming down in front of Bergamo to Lecco and Como again. It was, he said, to be purely defensive, 'to show the world that there were a sufficient number of idealists who were willing to sacrifice a great deal to obtain a general anti-Communist front, but who would never surrender unconditionally or to the local Communists.'

"In accordance with this suggestion he offered me a commission in the 'Brigade Nera.' I told him that I could not accept that, because such an acceptance might involve me in firing on my fellow-countrymen, and this I was unwilling to do, but that I would certainly go with him and address myself in a manner that my opinions should be unmistakable.

"He thought the front might hold three or four weeks on the Po, and seemed in no hurry to abandon Milan, although it was my opinion and that of others that the defence of Milan was not very practicable. In any event, I decided to go over to Como to have a look round and see what was happening there. In accordance with that I left Milan on the night of the 25th, and two-thirds of the way along the *autostrada* to Como I was surrounded by Partisans and made prisoner. On my insistence they finally consented to hand me over to the British authorities<sup>1</sup>. The rest is known.

"What has been set out above is through lack of documents naturally not checked to the day. Moreover, journeys of pure information that I made to Russia and elsewhere are not given, as are many subsidiary and less important things, in order that a short, concise document might be presented, giving the general view of what I had done.

"I particularly want to draw attention to the fact that I defy anyone to find in my speeches, radio or otherwise, my conversations in private and of what I have written, one single, solitary word against my country. . . . On the contrary!

"Moreover, before even considering to explain to Hesse the British Legion proposal, it was definitely agreed that this should be exclusively anti-Bolshevist,

<sup>1</sup> According to British sources in Milan, Amery objected strongly to being handed over to his countrymen.

and never on any account used on any other but the Russian front, and there on that part of the front where the presence also of Estonian, Lettish, Latvian, and Finnish troops was in existence. Therefore this action of mine was at all times Socialist and anti-Bolshevist, guided by the certainty that Russia was a far greater danger to England than Germany, as she stood at the end of 1942. This is idle to pursue. The conception has collapsed in the military defeat of one side of the supposed alliance, most of my friends are dead, and I am a prisoner in jail. As also Prince Borghese and many others who were, without being Fascist or National-Socialist, lined up in the anti-Communist front.

"Throughout Europe, which I know very well, and four of whose languages I speak, I have innumerable friends who also are resolutely anti-Communist and in these circles, eight years' fighting against Communism has given me both influence and weight.

"Considering (unless time proves all the anti-Communists to have been insane) that Russia and her Communist satellites will prove a great danger to the civilised world, and to the British Empire in particular, before very many months have gone by; considering also the massacres these people have indulged in to my certain knowledge in Milan (prior to the arrival of Allied troops), in Trieste and throughout the Balkans; considering that their whole policy, far from seeking liberty, is to install a most bloodthirsty dictatorship, that the Prime Minister, prior to 1941, has frequently and eloquently denounced; may I be permitted to suggest to the political and intelligence departments of His Majesty's Government that in some form or other I can still carry on my life's political work and render very considerable services to my country?

"Whether I do this in my own name or in some fictitious one, whether it should be now or when events prove me right and the tension has increased with Russia, does not matter very much. What matters to us is that civilisation should not be utterly destroyed and mankind relive a period worse than the Middle Ages. What remains of anti-Communist forces that fought with Germany and Italy is still very considerable, and among the best of the young generation. This can greatly serve for the maintenance of peace in Europe and its defence.

"Germany opposed Bolshevism for four years, so now the only thing that stands between the Bolshevisation of Europe and its safeguard are British and American armies. In consequence, with them we shall be more than happy to continue the fight that commenced in Seville in June, 1936, and which has continued to this day.

"The very great majority of my belongings, diaries (that I greatly need to prove various happenings in the period heretofore given), and other documents still remain in the hands of the Local Liberation Committee, Via Piave 8, Milan. My entire luggage these people seized in the Hotel Diana (Milan) during my absence and took to their office. They seemed not very inclined to return it. Moreover, the colonel commanding the Piazza de Milano, who brought me from Sorrognò to Milan, undertook at the time to have returned my property that was seized by the Partisans when they arrested me. Of this nothing has so far been seen. It consists of one suitcase (important documents and personal effects), one overcoat, one fur coat and two silver foxes, a 20-litre petrol tin full, one Lancia Aprilia motor-car, No. 78410."

There certainly seemed little to be said for the Defence after this statement had been read, but Mr. Lickfold, Amery's solicitor, assured the Chief Magistrate that his client had a complete answer to the charge and wished always to emphasise that he had never sought to injure the British Empire. Amery was then committed to the Old Bailey.

When the next sessions began, however, the Defence applied for an adjournment, and it became known that Amery was now claiming to be a naturalised

Spanish subject: the documentary evidence of this, it was explained, might take some time to collect. At the October sessions the application was repeated. Mr. Slade, who had been briefed to defend him, told the Judge, "On information given to me, Amery became a naturalised Spanish subject in the course of the Spanish Civil War." He added that relatives were at the moment making inquiries there. So it was not until the 28th November that Amery appeared at the Old Bailey to stand his trial.

Then an astonishing thing happened. Mr. Slade, who was to defend him, was called down into the cells to see his client. The Judge, Mr. Justice Humphreys, waited for an hour before entering the court. When he did so, Amery was brought into the dock and listened attentively to the reading of the indictment, which contained eight counts. Then he paused for a few moments and said, "I plead Guilty to all counts."

The Judge asked Mr. Slade if Amery really understood what he was doing, and what the inevitable result must be. Mr. Slade said, "I can assure you of that, my Lord. I have explained the position to my client, and I am satisfied that he understands it."

It meant, of course, the death penalty, without any right of appeal to a higher court: evidently there had been no substance in the suggestion of prior Spanish citizenship.

Mr. Justice Humphreys then said, "John Amery, I have read the depositions and exhibits in this case and I am satisfied that you knew what you did, and that you did it intentionally and deliberately after you had received warnings from more than one of your fellow-countrymen that the course you were pursuing amounted to high treason. They called you a traitor and you heard them; but in spite of that you continued in that course. You now stand a self-confessed traitor to your King and country, and you have forfeited your right to live."

He then passed sentence of death on Amery, who was hanged at Wandsworth Jail on the 29th December, 1945. His trial at the Old Bailey lasted only eight minutes.

It would appear that, recognising that his case was hopeless, he wished to spare his family the infamy of a protracted trial: if so, he certainly showed a degree of courage.

### (3) FRANK AXON

Axon, a driver in the Royal Army Service Corps, was captured at Corinth in 1941, taken to a prison camp in Germany and released from it in March 1945 to join the "British Free Corps." He served in this for only six weeks, but assisted other German units against the Russian advance.

He was sentenced by a Chelsea court-martial on the 9th January, 1946, to two years' hard labour.

### (4) NORMAN BAILLIE-STEWART

This trial at the Old Bailey in January 1946, was in some ways the strangest of the whole series. To the man in the street Baillie-Stewart was notorious as the Seaforth Highlander subaltern who as far back as 1933 (when he was in his early twenties) had been court-martialled and sentenced to five years' penal servitude for selling military secrets to Germany—and pre-Nazi Germany at that. And now he had been openly broadcasting for the Nazis in Berlin and elsewhere all through the war. Yet the Prosecution, having charged him with high treason and with offences against the Defence Regulations, was found to be

ready to drop the treason charge; and the Judge, Mr. Justice Oliver, concurred in this decision. The man in the street was puzzled, but the reason for this clemency was clear enough.

It was that he had abjured his British citizenship long before the war: in 1939 he no longer pretended to give allegiance to the Crown, and the Crown most certainly had ceased to regard him as a person entitled to its protection. He had applied for German naturalisation nearly two years before the start of the war—he went to Germany and Austria immediately after his release from prison in January 1937—and, one gathers, it was only because a German Ministry mislaid his papers (just as Ministries do everywhere) that the final granting of his application was delayed until 1940 or 1941. Technically, to be sure, this delay meant that he was still a British subject in 1939; but morally, as Sir Hartley Shawcross, the Attorney-General, pointed out, he had ceased to be one from 1938.

He pleaded Guilty to the offences against the regulations. Much of the evidence against him, by the way, was discovered in his flat in Vienna, where the Russians had looted everything of value but left his documents intact. The difficulty was to know what to do with him. The Judge, on the assumption that he was now in law a German subject by naturalization, suggested that he might enter into a recognizance to leave England at once and go back to Germany; but the Attorney-General explained that the Allied Control Commission considered his present return extremely undesirable. So, after a day's adjournment, he was somewhat illogically sentenced to five years' imprisonment: doubtless he will be released and sent out of the country as soon as conditions permit.

A foolish rumour spread in some circles that Baillie-Stewart was treated with leniency because he was really an English master-spy: the whole of his former trial and his activities since his release, it was whispered, were part of a marvellous trick played by the British Secret Service on the innocent and trustful Germans. There is not a vestige of truth, or of sense, in this silly chatter. Baillie-Stewart was, and remains, the most contemptible of all this brood of offenders.

#### (5) MARGARET FRANCES BOTHAMLEY

At the end of March 1946, this 67-year-old woman pleaded Guilty at the Old Bailey to entering the German radio service during the War, broadcasting for it and preparing propaganda for broadcasting. The Prosecution, who stated that she was born in London of English parents, agreed that she had remained loyal in one sense to her native country, in that all the time she was working for the Germans she hung pictures of the King and Queen in her German apartment. She was, however, obsessed with anti-Bolshevist views.

According to her own statement she had married a German many years ago, but this could not be verified and she had certainly never claimed to be anything but a British subject. She was sentenced to a year's imprisonment, but in the first division—a very unusual concession in these days.

#### (6) ELSA GERTRUDE BRIETZMANN

This woman pleaded Guilty at the Old Bailey on the 20th March, 1946, to assisting the German wireless service during the War as, first, a typist and, later, an announcer. In the second capacity she broadcast to India on the theme of "the hated British regime," inviting her listeners to play their part in the "Great Indian Revolution" and "to unite to deliver a crushing blow to British Imperialism."

Hers was, however, an exceptional case. She was born at Brighton in 1911 and was thus a British-born British subject; but her father was a German who was interned here in the 1914-18 War, never renounced his German nationality and called his daughter to Germany in 1923, when she was twelve. She thus became a person of dual nationality, owing allegiance in various degrees to both England and Germany. After the German collapse in 1945 she came back to England, but was not arrested until several months had passed.

Mr. Justice Hilbery, taking the unusual circumstances into consideration, and also the fact that she had not taken part in any subversive movement in England since her return, bound her over in her own recognizances to be of good behaviour for two years.

#### (7) THOMAS HALLER COOPER

This young man, aged 26, formerly a London clerk, was brought up at the Old Bailey early in January 1946, charged with high treason in Germany and occupied Europe between the first day of 1940 and the 30th April, 1945.

The Attorney-General, prosecuting, said that Cooper was born in London of an English father and a German mother and joined the British Union of Fascists when he was nineteen. In July 1939, he went to Germany with his mother and began to teach languages; at the outbreak of war two months later he was arrested by the Nazis but was released at his mother's request. For the next few months he acted as tutor to the son of a German official, after which he was enlisted in the Adolf Hitler Division of the *Waffen S.S.* and served in Poland, and afterwards in Russia, where he was wounded. Leaving hospital in June 1943, he was asked by the German Foreign Office to compile a pamphlet for distribution to British prisoners of war; in fact he wrote two and received 100 marks for them.

At one prisoner-of-war camp he told a British quartermaster-sergeant that he had left England in 1939 because he had killed or badly injured a Jew in the East End, and he also boasted that he had killed some Russian prisoners of war. In August 1943, he became naturalized as a German, and then tried to persuade British prisoners to join Amery's "Legion of St. George" and its successor, the "British Free Corps." After D-Day, however, he changed his tune and told British prisoners that he had been a fool.

His defence was the usual story that he had sought throughout to act in British interests and, by pretending to be pro-German, to obtain useful information for the British military authorities. It was in the circumstances a story which no jury could accept, and the Old Bailey jury did not accept it. Cooper was thereupon condemned to death; his appeal to the Court of Criminal Appeal was quickly dismissed.

The reprieve of Purdy (*see below*), which was announced at this time, gave Cooper's relatives hope that his life too might be spared. A curious feature of his case emerged at the trial: it was that he was in many ways more German than English. He certainly spoke German more correctly than his father's language, and his whole bearing was more Teutonic than Cockney. In the end he was reprieved on the 19th February, 1946, and will presumably spend many years in prison.

#### (8) RAY NICHOLAS COURLANDER

Lance-Corporal Courlander of the New Zealand Expeditionary Force was court-martialled at Westgate in October 1945, for voluntarily aiding the enemy while a prisoner of war by broadcasting and joining the British Free Corps and the S.S.

He was captured by British troops in Brussels, in September 1944, wearing the uniform of a S.S. war-reporter.

A witness named Freeman, a commando, said that Courlander told him that Thomas Cooper (*see above*) was to be the Führer and he (Courlander) the Deputy Führer of the British Free Corps, which was intended to become the future army of Great Britain. Another witness, Private Rose, said that uniforms for the British Free Corps reached a prisoners' camp at Hildesheim on the 1st April, 1944, but—in view of the unpropitious date—were not handed out till the next day. It was then found that the uniforms were German, and thirty men who had been drafted to, or volunteered for, the Corps refused to wear them.

In his defence Courlander claimed that, if only he could have had the assistance of forty determined men, he could have captured the Berlin radio-station during the "Generals' revolt," of July 1944. A statement by him was put in, which said that John Amery was to be a member of a Provisional Government for Great Britain to be set up in the Channel Islands as soon as 1,500 prisoners had joined the British Free Corps.

Courlander was sentenced to fifteen years' penal servitude.

#### (9) HUGH WILSON COWIE

This man of twenty-seven, a private in the Gordon Highlanders attached to the Corps of Military Police, was sentenced to fifteen years' penal servitude by an Aldershot court-martial in January 1946 for aiding the enemy by joining the "British Free Corps." He put up the defence that he joined the Corps with the patriotic intention of sabotaging it and escaping from Germany with information useful to the British military authorities; but he was not believed.

#### (10) FREDERICK ARTHUR CROFT

A gunner in the Royal Artillery, Croft was captured by the Germans in Libya in April 1941. After attempting (so he said) to escape no fewer than seven times, he joined the "British Free Corps," and was sent to Stettin to fight the Russians.

He was sentenced by a Chelsea court-martial in January 1946 to six months' detention.

#### (11) PATRICK JOSEPH DILLON

This man, a Clydeside Irishman, went with his parents to Canada in 1935, when he was twenty-eight years old. Two years later he went to New York and there, at the outbreak of war, he tried (so he said) to enlist in the British forces but, failing in this, shipped as a fireman on board the S.S. *Brishane*, which was sunk by a German submarine on the 20th November, 1940, when he was taken prisoner.

In March 1943, he told the senior British officer in the camp where he was held that he was going to take a job on the staff of the Germans' propaganda newspaper in English, *The Camp*. The officer asked him if he realized what he was doing, and Dillon replied cheerfully that he was quite capable of looking after his own business. He then managed to get himself attached to the Irish section of the German propaganda system at a monthly salary of 600 marks. His conduct was, however, unsatisfactory and the Germans sent him to a farm camp. When he was arrested, he said, "I don't consider myself a British subject or as owing allegiance to Great Britain."



Since he was fortunate enough to be charged only with offences against the Defence Regulations, to which he pleaded Guilty, he escaped at the Old Bailey with a sentence of ten years' penal servitude. He appealed against this, but the Court of Criminal Appeal dismissed the appeal, telling him, reasonably enough, that on the evidence he might well have been indicted for high treason and hanged.

(12) FRANCES DOROTHY ECKERSLEY AND JAMES ROYSTON CLARK

Mrs. Eckersley, a woman of fifty-one, and her son, aged twenty-two, pleaded Guilty at the Old Bailey in December 1945, to aiding the enemy, contrary to the Defence Regulations.

The Prosecution stated that the two went to Germany in 1935 (when the boy was only twelve) and each summer thereafter, and were in Berlin when the war broke out. Mrs. Eckersley was an ardent pro-Nazi—she wrote in 1937 with rapture that "I gazed upon Hitler"—and, meeting William Joyce in the autumn of 1939, she decided to stay in Germany. In December of that year the Germans engaged her for twenty marks a day ("I was delighted, as I was desperate for marks") to become an announcer on their wireless. She did in fact announce Joyce, Baillie-Stewart and other British speakers.

When she was arrested, she said, "It seems comic that anything I've done should be so tremendous," and, when formally charged at Bow Street, she said, "I'm bowled over by the wording. I never did anything to help the enemy. I only did it to get our bread and butter. What I did didn't help the enemy one ha'porth."

Clark also made a statement in which he said, "I appreciate that my broadcasts were entirely anti-British, but I had at that time no objection to this, as I was still in the hysterical state of mind which had been fostered by the Nazis." He went on to state that the news of air-raids on England brought him to his senses, and from 1941 he had struggled to get free from the Germans.

Mr. Justice Humphreys said, "Frances Dorothy Eckersley, before the war started there can be no question that you were a pronounced pro-Nazi and an admirer of that man who is now dead. You gave yourself wholeheartedly to the Germans. You were perfectly willing to, and did, assist in the propaganda which you yourself describe as propaganda against England," and he sentenced her, most leniently, to one year's hard labour.

To her son, whom he bound over for two years, he said, "I do not believe that you are at heart or ever have been a traitor. You were caught up with many others in that abominable, clever and insidious propaganda embodied in the tenets of the Nazi youth organisation." He hoped that this appearance in the dock at the Old Bailey would not be held against Clark in the future and that he would now embark on an honourable career.

(13) BENSON RAILTON METCALF FREEMAN

Freeman, a 42-year-old pilot-officer in the R.A.F., was sentenced to ten years' penal servitude and to be cashiered by a court-martial at Uxbridge, in August 1945, for having, as a prisoner of war, served in the *Waffen S.S.*, and written broadcasting scripts for the Germans at a salary of 200 marks a week.

(14) ARTHUR VINCENT FRYER

This man was court-martialled in London, in October 1945, on charges of "voluntarily aiding the enemy, in that in Germany between the 1st November,

1942, and the 5th April, 1945, having been made a prisoner of war, he voluntarily gave assistance and information to the enemy concerning fellow prisoners of war."

It was stated that Fryer, a driver in the Royal Artillery, was wounded and captured at Boulogne in May 1940. The Germans asked him to write a report on the attitude of men confined with him in a working camp in a stone quarry; he did so and mentioned three of them by name as being specially hostile to the Germans. He said that "They spend their time plotting how they can escape" and, of one of them, that "He put forth a plan to burn the dwellings down. He wanted to perpetrate all manner of sabotage on the works." And Fryer added a request to have himself moved from the camp.

Unfortunately for him, however, the report, was lent by a German corporal to one of the other prisoners, and passed it on by him to the senior British officer, who copied it.

Fryer's explanation to the Court was that he was trying to ingratiate himself with the Germans in order to gather information which would assist the Allied forces when they invaded Germany; also that, for the sake of the rest of the prisoners in the camp, he was willing to sacrifice the three men he betrayed.

He was sentenced to ten years' penal servitude.

#### (15) WILLIAM HUMPHREY GRIFFITHS

Griffiths, a Welsh Guardsman, aged thirty-four, was sentenced by a court-martial in England to seven years' penal servitude on the 31st October, 1945, for voluntarily aiding the enemy while a prisoner of war by broadcasting. He said in mitigation of his offence that he protested to the Germans against having to do this work, whereupon they spoke of sending him to a concentration camp and William Joyce threatened his life.

#### (16) GERALD PERCY SANDYS HEWITT

This man appeared at the Old Bailey in March 1945, charged, under the Defence Regulations, with assisting the enemy. He was a teacher of languages, forty-four years of age, twenty-six of which had been spent in France. According to his own story, he was living in Paris when the Germans invaded France in 1940, but managed to escape to the South; in the winter of the following year, wishing to return to his Paris flat, he "approached the Germans in Lyons and struck a bargain with them": he and his mother were to be allowed to return to Paris on condition that he did anti-Communist—but not, he insisted, anti-British—propaganda for the Germans. After a short stay in Paris he went to Berlin; but, becoming disillusioned with the Nazis, he tried to escape and, after being turned back on the Swiss frontier, gave himself up to the British troops in France.

The Prosecution, on the other hand, said he had remained without complaint in the Germans' service—writing and recording propagandist scripts against all the Allies (not merely the Russians)—at a salary of from 20,000 to 25,000 francs a month—until the summer of 1944, when the liberation of France gave a different turn to his ideas. A letter to his mother from Berlin was quoted in which he informed her that the civilians there were "calm, splendid and cheerful. There is nothing of that hysteria which passes as patriotism in England."

Mr. Justice Macnaghton commented, "When you thought that your native land and your adopted country were both bound to fall, you treated with Germany. You decided to throw in your lot with those whom you expected

to be victorious. You sold yourself and your country and the country of your adoption to the enemy." He then sentenced Hewitt to twelve years' penal servitude.

(17) RAYMOND DAVIS HUGHES

A warrant-officer air-gunner in the R.A.F., aged twenty-two, from Mold, Flintshire, this man was court-martialled at Uxbridge in August 1945 for aiding the enemy by asking fellow prisoners of war to give the Germans information about R.A.F. formations; making three propaganda records for broadcasting; lending money to persons engaged in forming the British Free Corps; and accepting employment from the German Foreign Office and broadcasting authorities.

Two German witnesses were brought to England to identify him, and it was stated that he was shot down in a raid on Peenemunde in August 1943; the Russians liberated him in April 1945. His defence was that he was forcibly taken by the Germans to Amery and Baillie-Stewart and intimidated by them into serving the enemy.

He was sentenced to five years' penal servitude and to be ignominiously discharged from the Service.

(18) REGINALD ARTHUR HUMPHRIES

This seaman from H.M.S. *Royal Arthur*, twenty-nine years old, appeared at the Old Bailey in December 1945 on charges of assisting the enemy by broadcasting from Germany between the 1st July, 1943, and April 1945, contrary to the Defence Regulations. He broadcast in the name of "Father Donovan" and "Dr. Jeffreys." Sentencing him to five years penal servitude, Mr. Justice Humphreys said, "You were one of those people who, finding themselves in an internment camp, were ready to do anything to get out of it. You were ready to betray your country, and you did it."

(19) DENNIS JOHN LEISTER

According to his own statement, Leister, who was twenty-three years old and a member of the Peace Pledge Union, went to Jersey from England to avoid military service. When the Germans occupied the Channel Islands he worked for them, then escaped but was recaptured and sent to Berlin where, in July 1944, he joined the "British Free Corps." Eventually he escaped to Italy with a German girl and was arrested there by the Americans. He was tried at the Old Bailey with Alfred Minchin and others (*see below*) for joining the enemy's forces, pleaded Guilty, and was sentenced to three years' penal servitude.

(20) JOHN LINGSHAW

A Channel Islander, Lingshaw was charged at the Old Bailey in February 1946 with conspiracy to assist the enemy and with doing acts with intent to assist the enemy. Lord Goddard, the newly appointed Lord Chief Justice, directed the jury to acquit him of the conspiracy charge; but he was sentenced to five years' penal servitude on the other.

Some time after being transported to Germany after the occupation of the Islands in 1940, Lingshaw had voluntarily entered the German broadcasting service and made recordings of British news bulletins.

## (21) FRANCIS GEORGE McLARDY

This Liverpool-born man, whose name was often mentioned at trials of members of the "British Free Corps," was a sergeant in the Royal Army Medical Corps. In civil life a qualified pharmacist, he had been a member of the British Union of Fascists from 1934 to 1938. He was captured by the Germans in 1940 and sent to work in a prisoner-of-war hospital in Poland. To improve his conditions he made a written request to join the *Waffen S.S.*, explaining that he wished to fight the Bolsheviks. In consequence he was entrusted, with a handful of others, with the formation of the "Legion of St. George," which later became the "British Free Corps." Afterwards he applied to join the S.S. medical corps and was employed by the German broadcasting service.

In view of the very prominent part he had played in forming the Free Corps and seducing other prisoners of war into it, he was not altogether unfortunate in receiving a life sentence of penal servitude from a Chester court-martial in January 1946.

## (22) EDWIN MARTIN, JOHN GALAHER AND GEORGE HALE

These three privates in the Essex Scottish Regiment of the Canadian Army were captured in the abortive raid on Dieppe. Martin, who was twenty-six, and Galaher, who was twenty-four, were natives of Ontario, but Hale, who was twenty-four, came from Vassar, Michigan, in the United States. They were court-martialled at Farnborough in Hampshire in August and September 1945 for acting as informers while prisoners of war and voluntarily joining the British Free Corps.

Galaher's trial was heard *in camera* because the evidence disclosed details of the organisation whereby military intelligence was sent back to England from prisoners of war in Germany during the war. He was sentenced to life imprisonment.

In respect of Martin, it was shown that he was transferred by the Germans in March 1944 in civilian clothes and with a storm-trooper's pass from a prisoner of war camp to the British Free Corps training camp at Hildesheim. After three months there he was issued with a Death's-head cap and a S.S. uniform with a Union Jack round the right arm and a "British Free Corps" flash. He was then given the task of training new recruits for the Corps, in which he was to be one of the "Big Six." The work would not seem to have been very onerous, for apparently he had only about fifteen companions.

His defence now was that he had joined the Corps in the hope of disrupting it. But in an earlier statement he had said, "I wish the Germans had shot me rather than be in the present position. I didn't intend to tell you about the money" which he had received from the Germans for his services, "but you seemed to guess and know everything already."

He admitted that he had been in contact with the Irish department of the German Foreign Office. When he complained to Hughes (*see above*) that he had been forced to join the "British Free Corps," Hughes said it was just as well, because otherwise the Germans were preparing unpleasant surprises for him.

Martin was found guilty and sentenced to twenty-five years' imprisonment.

Hale, whose grandmother was a German, agreed that he used to go out from a camp for convalescent prisoners of war with a friendly German officer (who oddly enough, Hale pretended, knew all about the grandmother) to various beer-gardens; his purpose was, he said, to pick up useful information! This officer, however, who was known to him as "South American Joe," made him drunk and one day persuaded him to put on civilian clothes to be photographed, and this had misled witnesses into thinking that he was enjoying favours from the Germans. He was sentenced to ten years' imprisonment.

(23) ALFRED VIVIAN MINCHIN, HERBERT GEORGE ROWLANDS,  
RONALD DAVID BARKER AND KENNETH EDWARD  
BERRY

These men were charged at Bow Street in December 1945 with being concerned with "John Amery, Thomas Haller Cooper, Eric Pleasants and others unknown" in joining the "British Free Corps." All four were merchant seamen.

Minchin was one of the (very few) men whom Cooper (*see above*) managed to seduce from a prisoner-of-war camp into Amery's "Legion of St. George"; Minchin claimed that he was responsible for its change of name to the "British Free Corps."

Rowlands, the eldest of the party—he was thirty-seven—claimed to have fought as a Communist in the Spanish Civil War.

Barker, an Australian, was captured by the Germans at sea in 1941. He said he was offered three thousand marks and "a good time" to join the "British Free Corps" and fight against the Russians; but when he was being sent to the Russian Front he shammed ill and eventually escaped.

Berry, captured in September 1940, felt an equal reluctance to carry out military duties and surrendered to the Russians in March 1945, a few days after being sent to a Panzer regiment in the East. His story that he had been compelled by the brutal Germans to join the "British Free Corps" was disproved by the production of a letter he wrote to John Amery from Dresden in November 1944, as follows:

Dear Sir,—I am writing a few lines and hope you receive them. Well, Mr. Amery, it is a long time since I saw or heard from you last, and I sometimes wonder how you are getting on. I hope you are in good health. I see in the French papers that you were wounded and I am glad to know that you have recovered.

I am still in the "British Free Corps" and we expect to go up to the front in two weeks' time. I do not think there is anything in it. We are doing pioneer training for the past six weeks and I like it very much. I speak a lot of German now so I can tell a few where to get off.

The sentences passed on these men at the Old Bailey in February 1946, when they all pleaded Guilty to offences against the Defence Regulations, were:

Minchin: seven years' penal servitude.

Rowlands: two years' hard labour.

Barker: two years' hard labour.

Berry: nine months' hard labour.

(24) WALTER PURDY

A former member of the British Union of Fascists, Walter Purdy, aged twenty-seven, was brought up at the Old Bailey on 18th December, 1945, on charges of high treason. After being captured at Narvik, where he was serving as a junior engineer in H.M.S. *Vandyke*, he became an "enthusiastic broadcaster" for the Germans under the name of "Pointer," though he was also known to the Germans as "Wallace." He broadcast until March 1944 from a station called "Radio National," which pretended to be in England; typical of the titles of his broadcasts were "The Air Racket" and "Jewish Profiteering in War." Other charges against him were that he betrayed to the Germans information about a secret wireless-set and a tunnel in a prisoner-of-war camp where he was confined, and that he wrote and distributed anti-Allied pamphlets to his companions.

Purdy was an exhibitionist. In the midst of his career in Germany, he did not hesitate to tell a senior British officer in one of the prisoner-of-war camps that, "I've been behaving like a rat and a traitor" and, on his return to England, he wrote a long confession of his activities and handed it to a casual friend to keep. When arrested, he was asked his birthplace, and replied, "Barking and true British, and never would be anything else."

In his defence Purdy declared, as most of his kidney did, that he had really been playing a double game. When he broadcast, he said, he tried to indicate by the tone in which he said "Good night" that it was a good night for the R.A.F. to bomb Germany. He explained also that he had written to his mother that he had "learned 200 ways of cooking and serving potatoes"—thus indicating the wave-length (200 metres) on which he was broadcasting—in order that she should take the letter to the authorities; indeed, she did so, but the authorities never showed any gratitude to Purdy. He said also that he had used his freedom in Berlin to do sabotage there during air-raids, such as throwing bottles of petrol into the broadcasting buildings; that he had stolen drawings from the German Admiralty; and that he had twice tried to kill William Joyce. On the first occasion, according to his story, he put a hand-grenade and booby-trap in Joyce's room, but he removed it because he was not certain that Joyce would be the person to open the door which would set it off; and, on the second, he placed three grenades in a suitcase beside Joyce in a train and pulled the string to set them off, but the grenades failed to explode. There is no reason to suppose that there was a single grain of truth in this defence.

He was sentenced to death by Mr. Justice Humphreys on the 21st December, 1945, after a four-day trial, and his appeal to the Court of Criminal Appeal was dismissed. A few days, however, before the date fixed for his execution he was most unexpectedly reprieved and his sentence commuted to life imprisonment.

#### (25) THEODORE JOHN WILLIAM SCHURCH

This man, a 27-year-old private in the Royal Army Service Corps, was court-martialled at Chelsea in September 1945 on nine charges of treachery and one of desertion with intent to join the enemy. It was alleged against him that in Africa he tried to join a front-line unit in order to desert to the enemy; he was in fact captured at Tobruk, whereupon he asked his Italian guards to put him in touch with their Intelligence. He now claimed to be a Swiss subject, and said that, when he was born in London in 1918 he was registered by his father as a Swiss. He had joined the army in 1936, he said, on instructions from the British Union of Fascists, to which he belonged.

He was found guilty on all ten charges, sentenced to death, and hanged on the 5th January, 1946.

#### (26) RONALD SPILLMAN

This lance-corporal, aged twenty-four, from Mare Street, Hackney, London, was court-martialled in November 1945 for broadcasting for the enemy after being captured in Crete. He admitted that he began his captivity by currying favour with the Germans with a report on the activities of his fellow prisoners. Then he entered the German broadcasting service and was paid the equivalent of £1 a day for writing four scripts a week. He said that he at first "fell" for the Nazis' propaganda and "when I came to my senses, it was too late to back out"; moreover, he wished to stay at liberty in Berlin because he had become friendly with a girl, Brigitte Meyer. He was sentenced to seven years' penal servitude.

## (27) HENRY ALFRED SYMONDS

This youth—he was only twenty-one at the time of his trial and had given a false age in 1941 when he joined the Princess Louise Kensington Rifles—was found Guilty by a court-martial in Cheshire on the 31st January, 1946, of voluntarily aiding the enemy while a prisoner of war. He admitted serving in the "British Free Corps" for about fifteen months; he said that, after his capture in Italy in 1943, he was approached by a Captain Williams who told him that the British and the Bolsheviks would soon be fighting each other and that the Free Corps, which was "six divisions strong," would join forces against the Red enemy. Symonds found that actually the Free Corps consisted at that time of its commanders (The "Big Six"), himself and one other man. He added that he joined the Corps in the name of "Harry Davies" because his real name might sound Jewish: in fact most of the volunteers, then and later, used pseudonyms for obvious reasons.

The Court was not impressed by Symonds's defence and sentenced him to fifteen years' penal imprisonment—one year for every month's treachery.

## (28) PEARL JOYCE VARDON

This thirty-year-old Jersey schoolteacher pleaded Guilty at the Old Bailey in February 1946 to assisting the enemy by broadcasting. Apparently she fell in love with a German officer in the forces which occupied the island in 1940, remained there with him till 1943, working for German contractors, and then agreed to go with him to Germany as a radio announcer.

She was sentenced to nine months' imprisonment.

## (29) JOHN ERIC WILSON

A former member of a Commando unit, Wilson, who came from Blackpool, was sentenced to ten years' penal servitude by a court-martial at Chelsea barracks on the 21st January, 1946, for voluntarily joining the "British Free Corps," from a prisoner-of-war camp in Germany.

Two other cases, rather more distant in time, may be mentioned here, although, since they were tried *in camera* during the war, few facts can be given.

## (30) DOROTHY PAMELA O'GRADY

This woman, who lived at Sandown, Isle of Wight, was sentenced to death at the Old Bailey after being found guilty of two offences under the Treachery Act. Her conviction, however, was quashed by the Court of Criminal Appeal in February 1941, but a sentence of fourteen years' penal servitude was passed on her by that Court for offences against the Defence Regulations of which also she had been convicted at her trial.

## (31) GEORGE JOHNSON ARMSTRONG

Armstrong, a ship's engineer from Newcastle, aged thirty-eight, was sentenced to death by Mr. Justice Lewis at the Old Bailey on the 8th May, 1941, and hanged, for two offences under the Treachery Act. He had put himself in touch with German consuls in various ports where his ship called and even gone specially to sea in order to provide them with information about British convoys and similar matters of interest to the enemy.

THE END





